95-1201

No. _____

_____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

VICKY M. LOPEZ, CRESCENCIO PADILLA,
WILLIAM A. MELENDEZ, and DAVID SERENA, *Appellants,*

v.

MONTEREY COUNTY, CALIFORNIA,
STATE OF CALIFORNIA, *Appellees,*

and

STEPHEN A. SILLMAN, *Intervenor-Appellee*

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

JURISDICTIONAL STATEMENT

Joaquin G. Avila
Counsel of Record for Appellants

Joaquin G. Avila
Voting Rights Attorney
Parktown Office Building
1774 Clear Lake Ave.
Milpitas, California 95035
Phone: (408) 263-1317
FAX: (408) 263-1382

Prof. Barbara Y. Phillips
University of Mississippi
Law School
University, Mississippi 38677
Phone: (601) 232-7361

Counsel for Appellants

QUESTIONS PRESENTED

I. WHETHER IN AN ACTION TO ENFORCE SECTION 5 OF THE VOTING RIGHTS ACT, A DISTRICT COURT CAN ORDER AS A TEMPORARY COURT-ORDERED ELECTION PLAN AN AT-LARGE ELECTION SYSTEM, WHICH HAS NOT RECEIVED SECTION 5 PRECLEARANCE, FOR ELECTING JUDGES TO THE MONTEREY COUNTY MUNICIPAL COURT DISTRICT, CALIFORNIA, A POLITICAL SUBDIVISION SUBJECT TO THE SECTION 5 PRECLEARANCE PROVISIONS.

II. WHETHER IN AN ACTION TO ENFORCE SECTION 5 OF THE VOTING RIGHTS ACT, A DISTRICT COURT CAN ORDER AS A TEMPORARY COURT-ORDERED ELECTION PLAN, AN ELECTION PLAN FOR ELECTING JUDGES TO THE MONTEREY COUNTY MUNICIPAL COURT DISTRICT, CALIFORNIA, WHICH DOES NOT COMPLY WITH THE STANDARDS APPLICABLE TO COURT-ORDERED ELECTION PLANS.

III. WHETHER IN AN ACTION TO ENFORCE SECTION 5 OF THE VOTING RIGHTS ACT, THERE ARE EXTREME CIRCUMSTANCES JUSTIFYING THE USE OF A TEMPORARY COURT-ORDERED ELECTION PLAN INCORPORATING AN AT-LARGE ELECTION SYSTEM FOR ELECTING JUDGES TO THE MONTEREY COUNTY MUNICIPAL COURT DISTRICT, CALIFORNIA, WHICH HAS NOT RECEIVED SECTION 5 PRECLEARANCE, IN AN ELECTION SCHEDULED FOR MARCH 26, 1996.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Table of Authorities
Cases Cont'd

Table of Authorities
Cases Cont'd

Table of Authorities
Cases Cont'd

State Constitutional Provisions

Federal Statutes

Federal Rules

Federal Regulations

Table of Authorities
Cont'd

Legislative History

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, and DAVID SERENA, *Appellants,*

v.

MONTEREY COUNTY, CALIFORNIA, STATE OF CALIFORNIA, *Appellees,*

and

STEPHEN A. SILLMAN, *Intervenor-Appellee*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

JURISDICTIONAL STATEMENT

OPINION BELOW

The Order Modifying Injunction filed by the United States District Court for the Northern District of California on November 1, 1995, is not yet reported and is reprinted in full in the Appendix. App. 1.

STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to 42 U.S.C. § 1973 c and 28 U.S.C. § 1253 to review the November 1, 1995, Order Modifying Injunction filed by the United States District Court for the Northern District of California. The November 1, 1995, Order Modifying Injunction was entered on November 9, 1995. The District Court denied Appellants' Motion for Reconsideration on November 30, 1995. App. 25. The appeal was filed on November 30, 1995, App. 26, well within the thirty day time period specified by 28 U.S.C. § 2101 (b).

STATUTORY PROVISIONS FEDERAL REGULATIONS

42 U.S.C. § 1973 c. The statute is reproduced in the Appendix (App. 85).

28 C.F.R. § 51.54 (b). The federal regulation is reproduced in the Appendix (App. 87).

STATEMENT OF THE CASE

This is an appeal from an Order modifying a previous injunction in an action to enforce the Section 5 preclearance provisions of the Voting Rights Act, 42 U.S.C. § 1973 c, in Monterey County, California. The Order modifying the injunction was filed on November 1, 1995, by the United States District Court for the Northern District of California. App. 1. The Order modifies an injunction filed by the District Court on December 20, 1994.[1] The

[1] The District Court's December 20, 1994, Order is reported. *Lopez v. Monterey County, California*, 871 F.Supp. 1254 (1994). The December 20, 1994, Order is also included in the Appendix. App. 10.

November 1, 1995, Order results in the enforcement and implementation of a change affecting voting in Monterey County, California, which has not received preclearance as mandated by Section 5 of the Voting Rights Act.

Monterey County, California, is a political subdivision subject to the special Section 5 preclearance provisions of the Voting Rights Act. Monterey County became subject to the Section 5 preclearance provisions on November 1, 1968. 28 C.F.R. Appendix to Part 51. Section 5 requires Monterey County to secure an administrative ruling from the United States Attorney General or a declaratory judgment from the United States District Court for the District of Columbia that a change affecting voting, subject to the Section 5 provisions, does not have the purpose and does not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. 42 U.S.C. § 1973 c. Such a change affecting voting cannot be enforced or implemented in any elections until the requisite Section 5 preclearance is obtained. *Clark v. Roemer*, 500 U.S. 646, 652 - 653, 111 S.Ct. 2096, 2101 (1991) ("If voting changes subject to § 5 have not been precleared, § 5 plaintiffs are entitled to an injunction prohibiting the State from implementing the changes.").

Monterey County, California, according to the 1990 Census had a 34% Latino population. App. 94 (Stipulations of Plaintiffs and Monterey County filed March 16, 1994, App. 92). Monterey County has experienced a significant growth rate among the Hispanic Origin population. From 1980 to 1990, the Hispanic Origin population growth rate was 59.1% while the white non-Hispanic population growth rate was 7.3%. App. 94. This Hispanic Origin population is geographically concentrated in the eastern part of the City of Salinas, the Castroville-Pajaro Valley north county area, and the south county area which includes the Cities of Gonzales, Soledad, Greenfield, and King City. App. 95. Although constituting 34% of the county's population, the Latino population constitutes 17% of the county's

eligible voter population. App. 91 (Demographic summary table of temporary election plan ordered by the District Court in the December 20, 1994, Order, App. 88. - Table attached to correspondence, dated January 6, 1995, from Monterey County Counsel, Douglas C. Holland, to the District Court (correspondence filed January 10, 1995)).

The Latino population in Monterey County is characterized by certain factors in the areas of education, language, employment, health, and housing, which may hinder their ability to effectively participate in the political process. App. 99. Of those persons who were over the age of 25 years in 1990, Latinos constituted only 19% of those persons who completed four years of high school and only 5% of those persons who had a bachelor's degree. App. 99 - 100. For 1990, in Monterey County, approximately 92% of the total civilian force was employed, while only 27% of the Spanish Origin labor force was employed. App. 101. In the area of poverty, Latinos also experienced rates which were greater. For 1990, 12% of the total population in Monterey County was below the poverty level, while the comparable figure for Latinos was 21%. App. 101. The mean income in 1989 for Spanish Origin households ($ 32,233) was less than the figure for all households in Monterey County ($ 43,185). App. 102. As to English language skills in 1990, there was a significant number of Latinos five years and over who spoke Spanish at home and did not speak English well or not at all (31,432) and a slightly smaller number (29,636) who were classified as linguistically isolated. App. 102. There was more overcrowding in Spanish Origin households in 1990. The total number of persons per occupied housing units for the county was 2.96, while the comparable figure for the Hispanic origin population was 4.34. App. 103.

These depressed socio-economic characteristics for the Latino population in Monterey County are reflective of the lack of Latino access to the political process. At the time of the filing of this action on September 6, 1991, there had never been a Latino municipal court

judge in Monterey County. App. 103. Membership on the municipal court in Monterey County is accomplished by way of an appointment by the Governor of California or by a successful election. Article 6, Section 16 (b) & (d) of the California State Constitution. At the time of the filing of this litigation in 1991, the Governor of California had never appointed a Latino to serve on the Monterey County Municipal Court District and the only two Latino candidates for the municipal court lost in the 1986 elections. App. 103. There was a similar absence of Latino representation on the Monterey County Board of Supervisors from 1890 to 1992. App. 98.

Elections in Monterey County are characterized by Anglo bloc voting which in the past has defeated the electoral choices of the Latino community. App. 96. This Anglo bloc voting coupled with a numbered place system for electing judges to the Monterey County Municipal Court District has impaired the opportunity of the Latino community to elect candidates of their choice. App. 99.

The Latino community has also experienced discrimination that has touched upon the rights of Latinos to effectively participate in the political process. The implementation of an English literacy requirement as a prerequisite to registering to vote in 1895 and enforced as late as the 1960s served to discriminate against those Latinos who did not understand or speak English. App. 97. Moreover, on two separate occasions, the United States Attorney General pursuant to Section 5 of the Voting Rights Act issued letters of objection disapproving an inadequate bilingual election procedure and a county board of supervisor redistricting plan which divided a politically cohesive Latino community. App. 97. And most recently, Monterey County has stipulated that the County "... is unable to establish that several of Monterey County's judicial district consolidation ordinances ... did not have the effect of denying the right to vote to Hispanics in Monterey County due to the retrogressive effect several of these ordinances had on Hispanic voting strength." App. 98 - 99.

This description of the Latino community's socio-economic conditions, the presence of Anglo bloc voting, and the voting discrimination directed at the Latino community in Monterey County provides an important context for the Court's consideration of the issues raised by this action and appeal.

Appellants filed this action to require Monterey County to comply with the Section 5 preclearance provisions. The Appellants sought an order requiring Monterey County to submit a series of county ordinances to the United States Attorney General for Section 5 administrative preclearance, or, alternatively, requiring Monterey County to seek Section 5 judicial preclearance of these county ordinances in the United States District Court for the District of Columbia. These county ordinances consolidated municipal court districts and justice court districts. App. 10.

On November 1, 1968, the date of Section 5 coverage for Monterey County, there were two municipal court districts and seven justice courts in Monterey County. App. 15, n. 3. By 1983, there was one county-wide municipal court district. App. 12. These judicial district consolidations modified the method of electing judges to the Monterey County Municipal Court District. As a result of these county ordinances elections for municipal court judges were changed from a district election basis to a single at-large or county-wide election system.

The Three Judge District Court ruled that these county ordinances were subject to the Section 5 preclearance provisions.[2] App. 12. Monterey County subsequently filed a declaratory judgment action in the United States District Court for the District of Columbia seeking Section 5 preclearance of these county ordinances. *Monterey County, California v. United States of America*, Civil Action No. 93-

---

[2] Actions to enforce Section 5 require the convening of a Three Judge Court. 42 U.S.C. § 1973 c.

1639 (CRR, SSH, KLH (U.S.C.A.)) (D.D.C. filed August 10, 1993). The Section 5 declaratory judgement action was subsequently dismissed by Monterey County. Monterey County could not demonstrate that several of these county ordinances did not result in a retrogression of minority voting strength and thus could not receive the requisite Section 5 preclearance. *Id.* (October 7, 1993, Stipulated Dismissal). App. 12 - 13.

Monterey County then submitted several election plans for the District Court's review. The election plans could not be unilaterally implemented by Monterey County. The election plans created election districts which were smaller than the county-wide municipal court district. In addition, the election plans divided the City of Salinas. The State of California intervened and argued that by dividing the City of Salinas the proposed election district plans violated Article VI, Section 5 (a) of the California State Constitution. Article VI, Section 5 (a) prohibits the division of any municipality into two or more municipal court districts. Also, the State argued that the separation of the electoral and jurisdictional bases of municipal court judges, as presented in the proposed election district plans, violated Article VI, Section 16 (b) of the California State Constitution.[3] Article VI, Section 16 (b) has been interpreted by the State as requiring a strict linkage between the jurisdictional and electoral bases of the municipal court judges. App. 12 - 13, 19.

On December 20, 1994, the District Court issued an Order. App. 10. To avoid any further delay in elections for the Monterey County Municipal Court District, the District Court ordered a special election for municipal court judges scheduled for June 6, 1995. The District Court further ordered Monterey County to implement, on a

---

[3] The State argued that under the proposed election plans, the election district was smaller than the area of the municipal court's county-wide jurisdiction. Thus, the jurisdictional base and the electoral base were not coterminous.

temporary basis, a previously submitted district election plan in the special election. App. 23 - 24.

Pursuant to the District Court's December 20, 1994, Order, Monterey County submitted the temporary district election plan to the United States Attorney General for Section 5 preclearance. App. 23. On March 6, 1995, the United States Attorney General precleared the temporary district election plan.[4] The District Court also enjoined any future elections to the Monterey County Municipal Court District pending the adoption and Section 5 preclearance of a permanent plan or until further order of the District Court.[5]

As a result of the June 6, 1995, special election and appointments by California State Governor Pete Wilson, there are now two Latino judges.[6] The terms of these newly elected judges are

---

[4] The March 6, 1995, preclearance letter is included in the Appendix. App. 53. The March 6, 1995, preclearance letter is an attachment to an administrative ruling issued by the United States Attorney General on November 13, 1995. App. 28. The March 6, 1995, preclearance letter is listed as Attachment C to the November 13, 1995, administrative ruling.

[5] In ordering a special election, the District Court subordinated the state interests expressed by the State of California and suspended applicable constitutional provisions to permit Monterey County to adopt the temporary election plan. App. 19 - 22.

[6] In the Application to Stay filed with this Court, the Appellants noted that the official record of these proceedings did not contain a reference to the two Latino Municipal Court Judges who were recently elected in 1995 and are now serving on the Municipal Court. Appellants were in error. This fact was communicated to the District Court at the September 28, 1995, Status Conference in this Case. App. 111. In any event, this Court can take judicial notice of

due to expire in January of 1997. App. 2.

On November 1, 1995, the District Court filed an Order modifying the injunction granted on December 20, 1994. App. 1. Although the District Court recognized that there was a continuing Section 5 violation, App. 2, the District Court declined to extend the terms of those municipal court judges elected pursuant to the temporary district election plan in the June 6, 1995 special judicial election. The basis for the District Court's ruling was its expressed concerns regarding the constitutionality of the temporary district election plan used in the special judicial election. Citing this Court's decision in *Miller v. Johnson*, __ U.S. __, 115 S.Ct. 2475 (1995), the District Court concluded that there is substantial doubt that race-based districts "... can ever withstand constitutional scrutiny." App. 3. Since the terms of those municipal court judges elected in the special election were due to expire in January of 1997 and Monterey County had not implemented a Section 5 precleared permanent plan for electing municipal court judges, the District Court ordered Monterey County to conduct municipal court elections on an at-large or county-wide basis in the upcoming March 26, 1996, elections with any run-off elections to be held on November 5, 1996. App. 8.[7]

The at-large or county-wide method of electing municipal court judges resulting from the implementation of county ordinances which are the subject of this Section 5 enforcement action have not

---

this fact. Fed. Rules of Evidence Rule 201, 28 U.S.C.A.

[7] Subsequent Orders filed by the District Court clarified the November 1, 1995, Order to permit run-off elections and defined the terms of those municipal court judges to be elected at the March 26, 1996, elections (November 20, 1995, District Court Order), as well as, adopted the election schedule proposed by Monterey County (November 21, 1995, District Court Order). These Orders are not included in the Appendix.

received the necessary Section 5 preclearance. The absence of any Section 5 preclearance was confirmed on November 13, 1995, by the United States Attorney General in an administrative ruling specifically stating that the at-large or county-wide method of electing municipal court judges had not received the required Section 5 preclearance. App. 29 ("Contrary to representations that apparently were made at that status conference, the at-large method of election for the municipal court judges in Monterey County was never submitted for Section 5 review, and it has not been precleared.").

The District Court on November 30, 1995, issued an Order denying Appellants' motion for reconsideration, which was based in part on the November 13, 1995, administrative ruling by the United States Attorney General. App. 25. The District Court stated that the basis for ordering county-wide elections for municipal court judges was the District Court's equitable powers to fashion a temporary remedy pending the Section 5 preclearance of an election plan which does not violate state law. The District Court's Order "... was not based on any assumption that county-wide elections for municipal court judges had been precleared." App. 25.

On November 30, 1995, the Appellants filed their Notice of Appeal. App. 26.[8] On January 2, 1996, the District Court denied Appellants' motion for a stay pending appeal. The one sentence order is not included as part of the Appendix. An Application to Stay is pending before Circuit Justice Sandra Day O'Connor.

This appeal seeks review of the District Court's November 1, 1995, Order modifying the December 20, 1994, injunction. The

---

[8] Direct appeal of the granting of the November 1, 1995, interlocutory injunction to this Court in a Section 5 enforcement action is mandated by 42 U.S.C. § 1973 c and 28 U.S.C. § 1253. The appeal was filed within the 30 day period specified in 28 U.S.C. § 2101 (b).

appeal seeks to prevent Monterey County from implementing a county-wide election for municipal court judges which has not received the required Section 5 preclearance. Although the District Court ordered county-wide elections as a temporary court-ordered remedy, the Order in effect is enforcing and implementing a change affecting voting which violates the Section 5 preclearance provisions.

Should this Court note probable jurisdiction and reverse the District Court's November 1, 1995, Order Modifying Injunction, Appellants will seek from the District Court an extension of the terms of those municipal court judges elected in the special June 6, 1995, election, which are due to expire in January of 1997. Such an extension will be necessary if new municipal court judges are not elected pursuant to a Section 5 precleared election prior to the expiration of those judicial terms. Moreover, if the Application to Stay is granted, or if the Appellants are successful in securing a reversal of the November 1, 1995, District Court Order, Monterey County, in accordance with the December 20, 1994, Order, will continue to be enjoined from enforcing and implementing any election plan for municipal court judges until such plan has secured Section 5 preclearance.[9]

---

[9] The United States has participated extensively as *amicus curiae* in the proceedings before the District Court. This participation has consisted of the March 6, 1995, Section 5 preclearance of the temporary district election plan which was implemented in the June 6, 1995, special municipal court election, and the issuance of an administrative ruling on November 13, 1995, stating that the county-wide method of electing municipal court judges had not received Section 5 preclearance. In addition, the United States supported the Appellants' motion for reconsideration and their request for a stay of the November 1, 1995, Order.

I. Argument - The Questions Presented are Substantial

This appeal centers on the important issue of whether a District Court can order, of what amounts to in effect, the implementation of a change affecting voting which has not received the requisite Section 5 preclearance. The adjudication of this issue raises substantial questions regarding the enforcement of the Section 5 preclearance provisions of the Voting Rights Act, especially in view of the circumstances presented by this case. As previously stated, a special judicial election was held on June 6, 1995, based upon an election plan which received the required Section 5 preclearance on March 6, 1995. Jurisdictional Statement at 8. Accordingly, there are municipal court judges who have been elected pursuant to a Section 5 precleared election plan. The District Court's November 1, 1995, Order will result in the replacement of these judges with judges who will be elected pursuant to an election plan which has not secured the necessary Section 5 approval. The least drastic alternative in this instance would be to maintain in office the current judges rather than to order the implementation of an election system which violates the Voting Rights Act. The District Court's November 1, 1995, Order is inconsistent with this Court's precedent which has repeatedly upheld the rights of minority voters to secure an injunction preventing the implementation of any election changes which have not received Section 5 preclearance. In view of this inconsistency, the District Court's Order raises substantial questions regarding the enforcement of the Voting Rights Act.

A. The At-Large or County-wide Method of Electing Municipal Court Judges in Monterey County has not Received Section 5 Preclearance.

There can be no dispute that the county-wide method of electing municipal court judges has not received Section 5 preclearance. On November 13, 1995, the United States Attorney General issued an administrative ruling determining that the county-

wide election system for municipal court judges in Monterey County has never been approved pursuant to Section 5. As noted by the United States Attorney General:

> "Contrary to representations that apparently were made at ... [the September 28, 1995] status conference, the at-large method of election for the municipal court judges in Monterey County was never submitted for Section 5 review, and it has not been precleared.
>
> ...
>
> ... Thus, it is clear from the submission letter that the at-large method of election was never submitted for Section 5 review, and the March 6, 1995, preclearance letter [approving the interim plan for the June 6, 1995, special election] demonstrates that the Attorney General did not review or preclear the at-large method of election."

App. 29 & 31. By ordering county-wide municipal court elections, the District Court is in effect ordering the implementation of a change affecting voting which has not received the requisite approval under Section 5.

This Court since 1966 has held that voting changes subject to the Section 5 preclearance provisions cannot be implemented in any election until Section 5 approval is obtained. Beginning with *State of South Carolina v. Katzenbach*, 383 U.S. 301, 335, 86 S.Ct. 803, 822 (1966), this Court noted that voting changes subject to the Section 5 preclearance provisions were automatically suspended: "The Act automatically suspends the operation of voting regulations enacted after November 1, 1964, and furnishes mechanisms for enforcing the suspension." In *Allen v. State Board of Elections*, 393 U.S. 544, 555, 89 S.Ct. 817, 826 (1969), this Court recognized the right of private parties to secure an injunction to prevent the implementation of

election changes which have not been submitted for Section 5 approval: "Further, after proving that the State has failed to submit the covered enactment for § 5 approval, the private party has standing to obtain an injunction against further enforcement, pending the State's submission of the legislation pursuant to § 5." (footnote omitted) *See also Id.*, 393 U.S. at 562 - 563, 89 S.Ct. at 830 ("The result of both suits [including a private Section 5 enforcement action] can be an injunction prohibiting the State from enforcing its election laws."). In fact in *Allen*, this Court issued injunctions against the enforcement of unprecleared voting changes: "All four cases are remanded to the District Courts with instructions to issue injunctions restraining the further enforcement of the enactments until such time as the States adequately demonstrate compliance with § 5." *Id.*, 393 U.S. at 572, 89 S.Ct. at 835.

Subsequent precedent by this Court has been consistent with *Allen*. *Perkins v. Matthews*, 400 U.S. 379, 397, at n. 14, 91 S.Ct. 431, 441, at n. 14 (1971) (City could implement only those voting changes which received Section 5 approval); *Georgia v. United States*, 411 U.S. 526, 541, 93 S.Ct. 1702, 1711 (1973) ("The case is remanded to the District Court with instructions that any future elections under the Georgia House reapportionment plan be enjoined unless and until the State ... [secures Section 5 approval].")[10]; *Connor v. Waller*, 421 U.S. 656, 95 S.Ct. 2003 (1973) ("Those Acts [legislative reapportionments] are not now and will not be effective as laws until and unless cleared pursuant to § 5."); *U.S. v. Board of Supervisors*, 429 U.S. 642, 645, 97 S.Ct. 833, 834 (1977) ("Attempts

---

[10] In *Georgia*, the District Court issued an injunction against the enforcement of the 1972 legislative redistricting plan in the 1972 elections. This Court without comment granted a stay of the District Court's injunction. *Georgia v. U.S.*, 406 U.S. 901, 92 S.Ct. 1601 (1972). A subsequent application by the United States to vacate the stay was denied. *Georgia v. U.S.*, 406 U.S. 912, 92 S.Ct. 1761 (1972).

to enforce changes that have not been subjected to § 5 scrutiny may be enjoined by any three-judge district court in a suit brought by a voter ..."). State courts are also required to enjoin the implementation of any voting changes which have not received the requisite Section 5 approval. *Hathorn v. Lovorn*, 457 U.S. 255, 269 - 270, 102 S.Ct. 2421, 2430 (1982) ("When a party to a state proceeding asserts that § 5 renders the contemplated relief unenforceable, therefore, the state court must examine the claim and refrain from ordering relief that would violate federal law." (footnote omitted)).

Most recently, this Court reaffirmed the rights of Section 5 plaintiffs to secure injunctive relief preventing the implementation of any voting changes which have not been approved pursuant to Section 5. In *Clark v. Roemer*, 498 U.S. 953, 111 S.Ct. 376 (1990), *as modified*, 498 U.S. 954, 111 S.Ct. 399, an application for an injunction and a stay was granted in part. The injunction enjoined the implementation of a Section 5 unprecleared voting change, in this case the creation of additional judicial seats, in upcoming elections, the first of which was scheduled about a week away.[11] In the subsequent decision, this Court stated in unambiguous terms that Section 5 plaintiffs are entitled to an injunction preventing the implementation of any changes affecting voting which have not received the required Section 5 preclearance. *Clark, supra*, 500 U.S. at 652 - 653, 111 S.Ct. at 2101.

As previously stated, the United States Attorney General in an administrative ruling dated November 13, 1995, determined that the county-wide method of electing municipal court judges in Monterey

[11] The application was filed on October 29, 1990 - the elections were scheduled for November 6, 1990, and December 8, 1990. *Clark, supra*, 500 U.S. at 651, 111 S.Ct. at 2100 ("On November 2, we granted the application in part and enjoined the elections for the judgeships that the District Court conceded were uncleared.").

County had not received Section 5 preclearance. App. 28.[12] Such an administrative interpretation given the central role of the Attorney General in the Section 5 preclearance process is entitled to deference. *United States v. Bd. of Com'rs of Sheffield, Ala.*, 435 U.S. 110, 131, 98 S.Ct. 965, 979 (1978) ("In recognition of the Attorney General's key role in the formulation of the Act, this Court in the past has given great deference to his interpretations of it."); *Blanding v. Dubose*, 454 U.S. 393, 401, 102 S.Ct. 715, 719 (1982) ("Finally, we have frequently stated that courts should grant deference to the interpretation given statutes and regulations by the officials charged with their administration.") (Court agreed with Attorney General's interpretation that the receipt of certain documents constituted a request for reconsideration of a previously issued Section 5 objection letter, rather than a new submission of a voting change); *Dougherty County, Ga. Bd. of Ed. v. White*, 439 U.S. 32, 39, 99 S.Ct. 368, 373 (1978) ("Given the central role of the Attorney General in formulating and implementing § 5, this interpretation of its scope is entitled to particular deference.") (Court agreed with the Attorney General's conclusion that a personnel rule requiring an employee of the school district who becomes a candidate for any elective office to take a leave of absence without pay was a rule which required Section 5 approval).

Moreover, if there is any ambiguity in applying the Section 5 preclearance provisions, such ambiguity must be resolved against the submitting jurisdiction. *McCain v. Lybrand*, 465 U.S. 236, 257, 104 S.Ct. 1037, 1050 (1984) ("To the extent there was any ambiguity in the scope of the preclearance request, the structure and purpose of the preclearance requirement plainly counsel against resolving such

[12] The fact that the county-wide election system will be implemented in only one election does not insulate the change in voting procedure from the Section 5 preclearance provisions. *N.A.A.C.P. v. Hampton County Election Com'n*, 470 U.S. 166, 178, 105 S.Ct. 1128, 1135 (1985) ("The Voting Rights Act reaches changes that affect even a single election." (footnote omitted)).

ambiguities in favor of the submitting jurisdiction in the circumstances of this case."). *See also N.A.A.C.P., supra*, 470 U.S. at 178 - 179, 105 S.Ct. at 1135 ("Any doubt that these changes are covered by § 5 is resolved by the construction placed upon the Act by the Attorney General, which is entitled to considerable deference." (footnote omitted)). In the present case, if the November 13, 1995, administrative determination by the United States Attorney General that the at-large municipal court election system has not received Section 5 preclearance is deemed to be ambiguous, such ambiguity must be resolved against Monterey County. However, the language of the November 13, 1995, administrative determination is clear.[13] The United States Attorney General has clearly stated that the at-large or county-wide method of electing municipal court judges in Monterey County has not received Section 5 preclearance.[14]

---

[13] Although the November 13, 1995, correspondence is an after the fact administrative interpretation, it is nevertheless entitled to deference by this Court. *See, e.g., McCain, supra*, 465 U.S. at 255 - 256, 104 S.Ct. at 1049 ("Finally, the Justice Department has recently indicated that the changes made in the 1966 Act and retained in the 1971 amendment have not been precleared ... and such after-the-fact Justice Department statements have been previously relied upon in determining whether a particular change was actually precleared in analogous circumstances.").

[14] This deference to the United States Attorney General's administrative interpretation of the Section 5 preclearance provisions is not without limits. *See Presley v. Etowah County Com'n*, __ U.S. __, 112 S.Ct. 820, 831 (1992) (where this Court did not defer to an administrative interpretation provided by the Attorney General, because Congress specifically stated its intent that § 5 reached only those changes affecting voting); *Miller v. Johnson, supra* (where this Court did not defer to an administrative interpretation which was not authorized by the Voting Rights Act). In the present litigation, the United States Attorney General's determination concluding that a certain change affecting voting had not been submitted for Section 5 preclearance was well within her administrative authority and, thus, this Court, consistent with previous decisions, should defer to this administrative interpretation.

Given the absence of any Section 5 preclearance, the District Court's November 1, 1995, Order implementing the at-large method of electing municipal court judges in Monterey County presents a clear violation of the Voting Rights Act and thus presents a substantial question for noting probable jurisdiction.

B. There are no "Extreme Circumstances" Warranting the Issuance of an Order Implementing a Method of Election Which has not Received Section 5 Preclearance.

Although federal courts can implement voting changes which have not received Section 5 approval, federal courts have been reluctant to order the use of such unprecleared election changes. As previously noted, in *Clark*, this Court granted an emergency application to enjoin elections based upon a voting change which had not received Section 5 approval. The emergency application which was filed on October 29, 1990, sought to enjoin the implementation of a voting change in the elections scheduled for November 6 and December 8, 1990. *Clark, supra*, 500 U.S. at 651, 111 S.Ct. at 2100. Although this Court did not decide the issue of under what circumstances an election based upon a Section 5 unprecleared voting change could proceed,[15] the Court, nevertheless, did suggest that such an implementation of a Section 5 unprecleared election change should be reserved for "extreme circumstances." As an example, the Court cited to an instance where the covered jurisdiction becomes aware of

---

[15] *Id.*, 500 U.S. at 654, 111 S.Ct. at 2102 ("We need not decide today whether there are cases in which a district court may deny a § 5 plaintiff's motion for injunction and allow an election for an unprecleared seat to go forward.").

an unprecleared election change on the eve of the election.[16]

There are no extreme circumstances present in this Section 5 litigation. The municipal court elections are scheduled for March 26, 1996, well over two months from now. There are other alternatives which would not violate Section 5 of the Voting Rights Act. One such alternative is to extend the terms of those municipal court judges elected in the June 6, 1995, special election.[17] A similar remedy could be provided, especially since the municipal court judges elected in the June 6, 1995, special election were elected pursuant to an election plan which received Section 5 preclearance.

Finally, this Court's decision in *Miller* also does not constitute an extreme circumstance providing a justification to implement an unprecleared Section 5 voting change. *Miller* involved a constitutional challenge to the congressional redistricting plan for the State of Georgia. In *Miller* the Supreme Court held that a race-based redistricting plan, where race was the predominant motivating factor in placing significant numbers of persons either within or outside a proposed district, is unconstitutional unless the "... districting legislation is narrowly tailored to achieve a compelling interest."

---

[16] *See also Campos v. City of Houston*, 968 F.2d 446 (5th Cir. 1992), *cert. denied*, _ U.S. _, 113 S.Ct. 971 (1993) (court abused its discretion in implementing Section 5 unprecleared election plan when Section 5 precleared plan was available.).

[17] *See Brooks v. State Bd. of Elections*, 790 F.Supp. 1156 (S.D.Ga. 1990) (judicial terms extended pending Section 5 compliance). The District Court in the present case expressed its reservation in extending any judicial terms which were based upon an election plan whose constitutionality is in question. However, such a reservation cannot justify a clear violation of Section 5, especially since there has been no finding by the District Court that the temporary election plan is in fact unconstitutional.

Miller, *supra*, _ U.S. at _, 115 S.Ct. at 2490. A brief review of the facts in *Miller* is necessary to demonstrate that the Supreme Court's holding is inapplicable to the present case where there is a violation of Section 5 of the Voting Rights Act.

The State of Georgia is subject to the Section 5 preclearance provisions of the Voting Rights Act. After the 1990 Census was published the State redistricted its congressional districts. During the time period from 1980 to 1990 there was only one majority Black congressional district. As a result of population growth, the State's allocation of congressional seats increased from 10 to 11. *Miller*, *supra*, _ U.S. at _, 115 S.Ct. at 2483.

The State adopted its first congressional redistricting plan in 1991. The 1991 redistricting plan contained two majority Black congressional districts and a third congressional district containing a 35% Black voting age population. When the plan was submitted for Section 5 approval, the United States Attorney General issued a letter of objection preventing the implementation of the 1991 redistricting plan. The basis of the letter of objection was the State's failure to avoid the fragmentation of the Black population. *Miller*, *supra*, _ U.S. at _, 115 S.Ct. at 2493 - 94.

The State submitted a second congressional redistricting plan for Section 5 approval on March 3, 1992. *Johnson v. Miller*, 864 F.Supp. 1354, 1364 (S.D.Ga. 1994). Although the redistricting plan increased the Black population concentrations in the three predominantly Black congressional districts, the United States Attorney General issued a second letter of objection on March 20, 1992. *Id.*, at 1365. The basis for the second letter of objection was that the State still did not incorporate certain Black population areas into the predominantly Black congressional districts. Accordingly, the State adopted a third congressional redistricting plan which eventually received the requisite Section 5 approval. The third congressional redistricting plan contained three majority Black voting age population

districts. *Id.*, at 1366.

Subsequently, Anglo voters challenged the congressional redistricting plan as an unconstitutional racial gerrymander. The District Court concluded that the plan violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. *Id.*, at 1393.

This Court affirmed. The Court concluded that the motivating factor in the adoption of the third congressional redistricting plan was to maximize the number of majority Black voting age population districts. *Miller*, *supra*, __ U.S. at __, 115 S.Ct. at 2489. The Court equated the placement of Blacks into the predominantly minority districts as an effort to segregate voters on the basis of race. Such segregation was no different than previous efforts by States to segregate Blacks in schools, public parks, and other public areas. *Miller*, *supra*, __ U.S. at __, 115 S.Ct. at 2485 - 86. These previous statutory racial classifications were constitutionally suspect. Thus, such an emphasis on race required the application of the strict scrutiny standard. Under strict scrutiny, a racial classification has to be narrowly tailored to achieve a compelling state interest. The Court applied this analysis to evaluate the constitutionality of Georgia's congressional redistricting plan. *Miller*, *supra*, __ U.S. at __, 115 S.Ct. at 2490.

In reviewing the factual record developed in the District Court, the Court concluded that race was the motivating factor in the adoption of the third congressional plan. The sole purpose of the third redistricting plan was to satisfy the concerns expressed by the United States Attorney General in the previous letters of objection. Since the letters of objection focused on the fragmentation of Black communities throughout the State of Georgia, the legislature's responsive redistricting legislation was similarly focused on race. This racial classification triggered the application of strict scrutiny. *Miller*, *supra*, __ U.S. at __, 115 S.Ct. at 2489 - 90.

To satisfy strict scrutiny, the congressional redistricting plan had to be narrowly tailored to achieve a compelling state interest. The asserted state interest in this case was compliance with the Section 5 preclearance provisions of the Voting Rights Act. However, the Court did not view this interest as compelling since the United States Attorney General incorrectly applied the substantive standards of Section 5 in issuing the two letters of objection. As noted by the Court: "... [C]ompliance with federal antidiscrimination laws cannot justify race-based districting where the challenged district was not reasonably necessary under a constitutional reading and application of those laws." *Miller*, *supra*, __ U.S. at __, 115 S.Ct. at 2491. The Court further stated: "The congressional plan challenged here was not required by the Voting Rights Act under a correct reading of the statute." *Id.*

The Court held that the United States Attorney General did not properly interpret and apply Section 5. *Miller*, *supra*, __ U.S. at __, 115 S.Ct. at 2491 - 92. The United States Attorney General did not follow the retrogression standard established in *Beer v. U.S.*, 425 U.S. 130, 141, 96 S.Ct. 1357, 1363 (1976). Under this retrogression standard, a political jurisdiction subject to the Section 5 preclearance requirements cannot implement a proposed change in the law affecting voting which results in a retrogression of minority voting strength. Since there was one majority Black population congressional district in Georgia during the time period of 1980 to 1990, the first congressional redistricting plan adopted in 1991, which contained two majority Black population districts, should have received the requisite Section 5 approval. By increasing the number of minority congressional districts, there was no retrogression in minority voting strength. Accordingly, the reliance by the State of Georgia on an erroneous application of federal law by the United States Attorney General could not serve to justify the use of race as a predominating factor in the formulation of a redistricting plan. Absent a compelling state interest, the congressional redistricting plan could not withstand a constitutional challenge.

As a result of *Miller* the proscription of race based redistricting, where race is the predominant factor, only applies to those instances where the State initiates the redistricting process. Since the United States Attorney General applied an erroneous interpretation of the Voting Rights Act, there was no other justification present to provide support for the State's adoption of a race based redistricting plan, where race was the predominant factor. In *Miller*, the State of Georgia sought to maximize the number of majority Black congressional districts. Without the support of the Voting Rights Act, the State's action was reduced to a voluntary effort to improve minority representation in the United States Congress. Under these circumstances, where the State adopts an implicit racial classification and race is the predominant factor, the Equal Protection Clause requires such a classification to be narrowly tailored to further a compelling state interest.

Different considerations apply if the State adopts a race-based redistricting plan, where race is the predominant factor, in response to a violation of the Voting Rights Act. Under applicable voting rights precedent, once a violation is established, federal courts must implement a remedy which addresses the discriminatory features of a successfully challenged election system. As noted in the Senate Report accompanying the 1982 Amendments to the Voting Rights Act: "The court should exercise its traditional equitable powers to fashion the relief so that it completely remedies the prior dilution of minority voting strength and fully provides equal opportunity for minority citizens to participate and to elect candidates of their choice." (Footnote omitted) Senate Report No. 97-417, 97th Congr., 2d Sess., at 31 (May 25, 1982). *See Louisiana v. U.S.*, 380 U.S. 145, 154, 85 S.Ct. 817, 822 ("We bear in mind that the court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future.") (1965). *See also Mississippi State Chapter, Operation Push, Inc., v. Mabus*, 932 F.2d 400, 406 (5th Cir. 1991) ("In an equity case, the nature of the violation determines the

scope of the remedy.").

In a typical voting rights case where a violation of the Voting Rights Act has been established, the political jurisdiction will be given an opportunity to propose a remedy which addresses the statutory violation. *Wise v. Lipscomb*, 437 U.S. 535, 540, 98 S.Ct. 2493, 2497 (1978) ("When a federal court declares an existing apportionment scheme unconstitutional, it is therefore, appropriate, whenever practicable, to afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure rather than for the federal court to devise and order into effect its own plan."). The use of race as a predominant factor in the formulation of a proposed election plan is permitted since the remedy must cure the statutory violation as well as not violate the race sensitive prohibitions of Section 2 and Section 5. The strict scrutiny constitutional analysis does not prevent the implementation of such a proposed remedy, since the proposed remedy must be narrowly tailored to further a compelling state interest. Under the *Miller* standard, the compelling state interest in the remedy phase of a voting rights action is compliance with federal statutory and constitutional voting rights standards. Should the remedy proposed by the State prove to be either unconstitutional or in violation of either Sections 2 or 5, the Court is then required to implement a court ordered plan which provides the necessary compliance with applicable constitutional and statutory provisions. In summary, *Miller* does not prevent a federal court from implementing a race-based redistricting plan as a remedy to address either a constitutional or Voting Rights Act violation.

In the present case, this District Court noted that there was a continuing Section 5 violation. App. 2. Thus, *Miller*'s proscription against the use of race-based redistricting, where race was the predominant factor, is inapplicable where there is a Section 5 violation. Moreover, in the present case, there was never any action filed challenging the temporary election plan used in the June 6, 1995, special judicial election based upon *Miller*. And, there was no

evidentiary hearing in the District Court to assess whether the temporary election plan in fact was unconstitutional. The sole basis for the District Court's November 1, 1995, Order was its expressed reservations regarding the constitutionality of the temporary election plan. Such reservations do not rise to the level of factual findings and should not form the basis for implementing an at-large election plan which violates the Section 5 preclearance provisions. In addition such reservations should not constitute "extreme circumstances" which would permit a District Court to render an equitable remedy that violates a federal law.[18]

In summary, the absence of any "extreme circumstances" and the reliance on *Miller* by the District Court to order a method of election which has not received Section 5 preclearance presents a substantial question for noting probable jurisdiction.

C. The November 1, 1995, Court-Ordered Plan, does not Follow the Standards Established by this Court for Court -Ordered Plans.

There is an additional reason for this Court to conclude that the District Court's November 1, 1995, Order raises a substantial question. This Court has stated in numerous decisions that in fashioning court-ordered plans, federal courts are held to higher

---

[18] In its previous Order of December 20, 1994, the District Court viewed the continuing violation of the Section 5 preclearance provisions as a reason for implementing a temporary election plan which received Section 5 preclearance. App. 17 - 18, n. 5 ("However, temporary relief is necessary to enable elections to go forward at this time without violating the Voting Rights Act."). The December 20, 1994, Order stands in sharp contrast to the November 1, 1995, Order where a temporary election plan incorporates an at-large election that will be implemented in violation of federal law by not securing Section 5 preclearance.

standards. *Connor v. Finch*, 431 U.S. 407, 415, 97 S.Ct. 1828, 1834 (1977) ("In such circumstances, the court's task is inevitably an exposed and sensitive one that must be accomplished circumspectly, and in a manner ' "free from any taint of arbitrariness or discrimination." ' "). Accordingly, this Court has required District Courts in fashioning court-ordered plans to adhere to certain requirements.

As a court-ordered plan, the District Court was required to follow the appropriate Section 5 standards. As noted in the 1975 Senate Report accompanying the extension of the 1965 Voting Rights Act: "Furthermore, in fashioning the [court ordered] plan, the court should follow the appropriate Section 5 standards, including the body of administrative and judicial precedents developed in Section 5 cases." Senate Report No. 94-295, 94th Congr., 1st Sess., at 19 (July 22, 1975). This Court in *McDaniel v. Sanchez*, 452 U.S. 130, 148, 101 S.Ct. 2224, 2235 (1981) cited with approval the aforementioned language and stated that the Committee Report was "... crystal clear on this point ..." by noting that "[t]he Committee unambiguously stated that the statutory protections are to be available even when the redistricting is ordered by a federal court to remedy a constitutional violation that has been established in pending federal litigation." Other courts have incorporated Section 5 standards in the formulation of court ordered plans. *See, e.g. Edge v. Sumter County School District*, 775 F. 2d 1509 (11th Cir. 1985). *See also, Upham v. Seamon*, 456 U.S. 37, 102 S.Ct. 1518 (1982).

As a result of this Court's decision in *Miller*, the pertinent Section 5 standard to be incorporated in a court-ordered plan is the retrogression standard.[19] A court-ordered plan should not result in a

---

[19] In fact, the District Court in its December 20, 1994, Order referred to the retrogression standard as a reason for not implementing an at-large election as part of a temporary election plan: "... [T]his court is reluctant to consider a single district, county-wide election

retrogression of minority voting strength. In the present case, the previous temporary election plan used in the June 6, 1995, special judicial election, received Section 5 preclearance on March 6, 1995. Consequently, the appropriate benchmark for evaluating any subsequent court-ordered plan is the temporary district election plan previously approved pursuant to Section 5.[20] When measured against the previous court-ordered plan, the November 1, 1995, court-ordered at-large election plan is retrogressive. The previous Section 5 approved plan contained two election districts each consisting of a 52% Latino eligible voter population.[21] The November 1, 1995, court-ordered election plan consists of a single county-wide election district where the Latino eligible voter population is 17% of the

---

plan as a temporary remedy in light of the supported stipulation that such a plan would be retrogressive in terms of Latino voting strength." App. 17, n. 4.

[20] The federal regulations governing the administration of Section 5 state that the appropriate comparison is the "... last legally enforceable practice or procedure used by the jurisdiction." 28 C.F.R. § 51.54 (b). Clearly, the "last legally enforceable" plan was the election plan used in the June 6, 1995, special judicial election, which received Section 5 preclearance. *See also State of Texas v. United States*, 785 F.Supp. 201, 204 - 205 (D.D.C. 1982) (court-ordered temporary plan is appropriate comparison); *State of Mississippi v. Smith*, 541 F.Supp. 1329, 1333 (D.D.C. 1982) (new plan must not result in retrogression when compared to court-ordered plan), *appeal dismissed*, 461 U.S. 912, 103 S.Ct. 1888 (1983); *State of Mississippi v. United States*, 490 F.Supp. 569, 582 (D.D.C. 1979) (court-ordered plan is the new benchmark for comparison), *sum. aff'd*, 444 U.S. 1050, 100 S.Ct. 994 (1980).

[21] According to a population analysis conducted by Monterey County, two of the municipal court election divisions each consisted of a 52 % Latino eligible voter population. App. 89.

eligible voter population for the County. App. 91. A reduction in Latino eligible voter population from 52% to 17% constitutes retrogression.

The District Court's November 1, 1995, at-large election plan violates another standard for court-ordered plans repeatedly reaffirmed by this Court. When federal courts must fashion a court-ordered election plan, single member districts are to be preferred over at-large election systems. *See, e.g., Wise, supra*, 437 U.S. at 540 & 541, 98 S.Ct. at 2497 & 2498 ("Among other requirements, a court-drawn plan should prefer single-member districts over multimember districts, absent persuasive justification to the contrary."). The District Court's expressed reservation regarding the constitutionality of the temporary district election plan cannot rise to the level of a persuasive justification justifying the use of an at-large election system. As previously noted, an expressed reservation is not tantamount to a judicial finding of unconstitutionality.

The use of an at-large election in a court-ordered plan is also unwarranted in view of this Court's observation that such election systems can have the potential to discriminate against minority voting strength:

> "Voters who are members of a racial minority might well be in the majority in one district, but in a decided minority in the county as a whole. This type of change could therefore nullify their ability to elect the candidate of their choice just as would prohibiting some of them from voting."

Allen, supra, 393 U.S. at 569, 89 S.Ct. at 833 - 834.

To conclude, the District Court's implementation of an at-large election system and its disregard of the Section 5 retrogression standard is inconsistent with the standards established by this Court for court-ordered plans and for this reason the November 1, 1995, Order raises a substantial question warranting the noting of probable jurisdiction.

Conclusion

The District Court's November 1, 1995, Order raises substantial questions regarding whether a Section 5 violation can be cured by the implementation of a court-ordered election plan which incorporates a method of election that also violates Section 5. Accordingly, probable jurisdiction should be noted and the Order should be reversed to enforce the Section 5 preclearance provisions of the Voting Rights Act in Monterey County, California.

Respectfully submitted,

Joaquin G. Avila
Counsel of Record for Appellants

Joaquin G. Avila
Voting Rights Attorney
Parktown Office Building
1774 Clear Lake Ave.
Milpitas, California 95035
Phone: (408) 263-1317
FAX: (408) 263-1382

Prof. Barbara Y. Phillips
University of Mississippi
Law School
University, Mississippi 38677
Phone: (601) 232-7361

Index to Appendix*

* Originals have not been modified to correct typographical and other types of errors.

Index to Appendix
Cont'd

Filed
Nov. 1,1995
Richard W. Wieking
Clerk, U.S. District Court
Northern District of California
San Jose

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, JESSE G. SANCHEZ, and DAVID SERENA, Plaintiffs, v. MONTEREY COUNTY, CALIFORNIA, Defendant. STATE OF CALIFORNIA, Intervenor-Defendant.	NO. C-91-20559-RMW Voting Rights Action Three Judge Court ORDER MODIFYING INJUNCTION

Background

On December 20, 1994 this court ordered the County of Monterey to hold a special election in 1995 for municipal court judges pursuant to a court-ordered, emergency, interim election plan.[1] The

[1] The order was clarified on January 10, 1995 to make clear that the order required a primary election with run-offs thereafter, if necessary.

court otherwise enjoined the election of municipal court judges pending the adoption and preclearance of a permanent election plan which complies with the Voting Rights Act and State law. The special election took place on June 6, 1995 and the terms of those elected stand to expire pursuant to the December 20, 1994 order in January of 1997. Monterey County has not yet been able to implement a permanent election plan. Therefore, the court faces the difficult question of what to do now.

Position of Parties

The plaintiffs want the court to implement a permanent election plan and to continue in the meantime the implementation of the plan utilized in the June 6, 1995 special election. The County requests that the court extend the terms of those elected, so that it can preclear and judicially validate a permanent plan before another election. The State urges the court to dismiss this Section 5 action as moot because the non-precleared consolidation ordinances were superceded by state law. If the court will not dismiss the action as moot, the State wants: (1) to be joined as a necessary party; (2) to have vacated the court's March 31, 1993 order finding that the County's consolidation ordinances were not precleared; (3) to litigate the merits of the preclearance issues; and (4) to allow county-wide elections in the meantime. Judge Sillman, the current presiding judge of the municipal court, urges that the court order county-wide elections to go forward in March of 1996 as an interim plan and that those elected remain in office for regular six year terms.

Analysis

The court finds this case to be one with no easy solution. We are faced with a Section 5 violation.[2] No permanent plan can be in

---

[2] The State appears to believe there has been no Section 5 violation that affects the County's ability to hold county-wide judicial elections. At this point the court is not persuaded by the State's position, but the State can now seek to show that the County is merely administering a state law calling for county-wide elections and, therefor, no preclearance requirement is involved.

place for a March election. A return to the status quo that existed before the enactment of the consolidation ordinances is not legal, feasible or desired. The Supreme Court in Miller v. Johnson, 115 S.Ct. 2475 (1995), has cast substantial doubt upon the constitutionality of extending the duration of the previously ordered emergency, interim plan, as that plan used race as a significant factor in dividing the County into election areas. Therefore, the court is concerned that extending the terms of those elected would be inappropriate. Under the circumstances, the court concludes that it should allow a county-wide election of municipal court judges in the general election in 1996 but enjoin elections thereafter pending preclearance of a permanent plan that complies with the Voting Rights Act and state law.

The court recognizes that now permitting an election on a county-wide basis raises some legitimate concerns. Although the court has not accepted the stipulation between the County and plaintiffs that the County Board of Supervisors "is unable to establish that the Municipal Court Judicial Court Consolidation Ordinances. . .did not have the effect of denying the right to vote to Latinos in Monterey County due to the retrogressive effect several of these ordinances had on Latino voting strength...." (Monterey County, Cal., Resolution 94-107), the court cannot overlook that stipulation in fashioning a temporary solution. However, this litigation is not a Section 2 proceeding. Further, neither the plaintiffs nor the County suggest that there is any evidence of purposeful discrimination in the enacting of the consolidation ordinances. Finally, Miller raises substantial doubt as to whether legislative division into race based districts or election areas can ever withstand constitutional scrutiny.

> Just as the State may not, absent extraordinary justification, segregate citizens on the basis of race in its public parks, New Orleans City Park Improvement Assn. v. Detiege, 358 U.S. 54, 79 S.Ct. 99, 3 L.Ed.2d 46

(1958) (per curiam), buses, Gayle v. Browder, 352 U.S. 903, 77 S.Ct. 145, 1 L.Ed.2d 114 (1956) (per curiam), golf courses, Holmes v. Atlanta, 350 U.S. 879, 76 S.Ct. 141, 100 L.Ed. 776 (1955) (per curiam), beaches, Mayor and City Council of Baltimore v. Dawson, 350 U.S. 877, 76 S.Ct. 133, 100 L.Ed. 774 (1955) (per curiam), and schools, Brown, supra, so did we recognize in Shaw that it may not separate its citizens into different voting districts on the basis of race. The idea is a simple one: "At the heart of the Constitution's guarantee of equal protection lies the simple command that the Government must treat citizens 'as individuals, not "as simply components of a racial, religious, sexual or national class." ' " Metro Broadcasting, Inc. v. FCC, 497 U.S. 547, 602, 110 S.Ct. 2997, 3028, 111 L.Ed.2d 445 (1990) (O'CONNOR, J., dissenting) (quoting Arizona Governing Comm. for Tax Deferred Annuity and Deferred Compensation Plans v. Norris, 463 U.S. 1073, 1083, 103 S.Ct. 3492, 3498, 77 L.Ed.2d 1236 (1983); cf. Northeastern Fla. Chapter, Associated Gen. Contractors of America v. Jacksonville, 508 U.S.__, __, 113 S.Ct. 2297, 2303, 124 L.Ed.2d 586 (1993) (" 'injury in fact' " was "denial of equal treatment ... not the ultimate inability

to obtain the benefit"). When the State assigns voters on the basis of race, it engages in the offensive and demeaning assumption that voters of a particular race, because of their race, "think alike, share the same political interests, and will prefer the same candidates at the polls." Shaw, supra, at __, 113 S.Ct., at 2827; see Metro Broadcasting, supra at 636, 110 S.Ct., at 3046 (KENNEDY, J., dissenting). Race-based assignments "embody stereotypes that treat individuals as the product of their race, evaluating their thoughts and efforts--their very worth as citizens--according to a criterion barred to the Government by history and the Constitution." Metro Broadcasting, supra, at 604, 110 S.Ct., at 3029 ("O'CONNOR, J., dissenting) (citation omitted); see Powers v. Ohio, 499 U.S. 400, 410, 111 S.Ct. 1364, 1370, 113 L.Ed.2d 411 (1991) ("Race cannot be a proxy for determining juror bias or competence"); Palmore v. Sidoti, 466 U.S. 429, 432, 104 S.Ct. 1879, 1881, 80 L.Ed.2d 421 (1984) ("Classifying persons according to their race is more likely to reflect racial prejudice than legitimate public concerns; the race, not the person, dictates the category"). They also cause society serious harm. As we concluded in Shaw:

> "Racial classifications with respect to voting carry particular dangers. Racial gerrymandering, even for remedial purposes, may balkanize us into competing racial factions; it threatens to carry us further from the goal of a political system in which race no longer matters--a goal that the Fourteenth and Fifteenth Amendments embody, and to which the Nation continues to aspire. It is for these reasons that race-based districting by our state legislatures demands close judicial scrutiny." Shaw, supra, at __, 113 S.Ct., at 2832.

Miller, 115 S.Ct. at 2486.

Whether race based election areas can withstand constitutional scrutiny is particularly doubtful when, as here, the legislative body is dealing with the election of judges who serve the entire County and no claim is made that the County itself was configured to deprive any racial or ethnic group of voting power. As pointed out above, Miller cautions that "[w]hen the state assigns voters on the basis of race, it engages in the offensive and demeaning assumption that voters of a

particular race, because of their race, 'think alike, share the same political interests, and will prefer the same candidates at the polls.' (citation omitted)." Id.

A county-wide election system does not assume that voters of a particular race or ethnicity will vote for the same candidates. It allows each voter one vote for each of the judicial offices. It makes the judges elected responsive to all citizens and avoids any risk of pressure on judges to respond to particular electoral constituents. See, Nipper v. Smith, 39 F.3d 1494, 1542-1547 (11th Cir. 1994).

Plaintiffs and the County contend that a county-wide voting plan cannot be imposed as an interim plan because it would be retrogressive in comparison to the interim, emergency plan implemented by the County after the court's December 20, 1994 order. (The appropriate retrogression comparison "...shall be with the last legally enforceable practice or procedure used by the jurisdiction." 28 C.F.R. § 51.54(b)). The court doubts whether the prior interim plan can be considered "legally enforceable" within the meaning of the regulation, because it suspended otherwise applicable provisions of state law and was adopted only on an emergency basis. Further, given the reasoning of Miller, the court cannot say that a county-wide election plan is necessarily unlawfully retrogressive in comparison with the prior plan or the system in effect prior to the consolidation ordinances.

The court also has considered the fact that a county-wide election system was the legislative choice of the citizens prior to the filing of this lawsuit. The court certainly recognizes its obligation to protect minority voting rights from unconstitutional action of the majority. However, the court has been presented with no interim plan that it finds more protective of minority voting rights as defined in Miller than the county-wide election plan in force at the time this Section 5 lawsuit was filed.

Since this case is not a Section 2 case and since the County, to its credit, through its Board of Supervisors, still wants to enact an election plan that complies with the Voting Rights Act and state law, the court will defer holding any hearing on a permanent plan. The

court also reconsiders its prior decision that the State should not be joined as an indispensable party. Since the State now argues that "in conducting municipal court elections, the County is not 'administering' its consolidation ordinances at all, but is instead 'administering' a *state statute* that defines the municipal court district to encompass the entire county," (State's Status Conference Memorandum, page 2, lines 12-14), the State clearly must be brought into this action in order to bring about a complete resolution of the issues. If the State believes that the County is only administering a State statute and that the failure to preclear the consolidation ordinances is of no significance, it can seek to lift the injunction and have this Section 5 litigation dismissed.

Order

Pursuant to its equitable power to effect a remedy, and for the reasons discussed above, the court modifies its previously issued injunction to allow the county-wide election of municipal court judges at the general election in 1996. The injunction remains in effect thereafter pending preclearance of a permanent plan that complies with the Voting Rights Act and state law. The terms of those elected will be for the normal six year term. All parties have an interest in stability of the court pending the implementation of a permanent election plan.

The court recognizes that the election schedule will have to be shortened somewhat to allow elections in March of 1996. However, the court believes the schedule can be shortened without unduly prejudicing any candidate. The County is hereby authorized to abbreviate the periods in its election calendar to allow all pre-election requirements to be fulfilled before the March 26,1996 election.

The court vacates its order of March 31, 1993 to the extent it denies the County's motion to join the State as an indispensable party and hereby joins the State.

The court also orders the parties to submit reports by September 6, 1996 outlining the progress that has been made in obtaining a permanent legislative solution.

DATED: 11/1/95

/s/

RONALD M. WHYTE
United States District Judge
On Behalf of the Panel

Filed
December 20, 1994
Richard W. Wieking
Clerk, U.S. District Court
Northern District of California
San Jose

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, JESSE G. SANCHEZ, and DAVID SERENA, Plaintiffs, v. MONTEREY COUNTY, CALIFORNIA, Defendant.	NO. C-91-20559-RMW (EAI) ORDER ENJOINING ELECTIONS PENDING PRECLEARANCE OF PERMANENT PLAN EXCEPT FOR COURT-ORDERED SPECIAL ELECTION IN 1995

I. INTRODUCTION

This is a case in which the plaintiffs challenged the implementation of six Monterey County ordinances on the ground that they were not precleared as required by the Voting Rights Act, 42 U.S.C. § 1973c. The ordinances consolidated two municipal and seven justice court districts into a single municipal court district with the judges being elected at large from the entire county. The court previously determined that the ordinances were subject to preclearance and that preclearance had not been obtained. The County

then sought preclearance but discontinued its effort stipulating that it could not establish that the consolidation ordinances did not have the effect of denying the right to vote to Latinos as a result of the retrogressive effect that consolidation had on Latino voting strength. Pursuant to this court's order which included an injunction prohibiting an election pending adoption and preclearance of an election plan,[1] the County next attempted to secure an amendment to the California Constitution regarding the configuration of districts, so it could implement an election plan that complied with the Voting Rights Act and did not violate any provision of California law. The County was unsuccessful. The question now facing the court is what remedy, under the circumstances, is appropriate.

II. SUMMARY OF CURRENT ISSUE BEFORE COURT AND DECISION THEREON

Plaintiffs and Monterey County urge the court to allow elections to take place under a plan that would involve maintaining the current single, county-wide district but with election areas. This plan would eliminate linkage between the judges' jurisdictional and electoral bases and would split the City of Salinas into two areas for election purposes. However, it would allow the County to continue its current administrative scheme for the county-wide operation of the municipal courts. As an alternative, plaintiffs and the County ask that the court authorize the County to implement a plan which would include more than one district and would split the City of Salinas.[2]

---

[1] The County has chosen not to attempt to obtain preclearance of a plan that potentially violates state law in any way without this court's permission, apparently believing that any attempt to do so would result in preclearance rejection or be futile.

[2] Return to the last lower court district plan in effect before passage of the subject ordinances was conceded by plaintiffs and the County to be impractical.

This plan would require substantial administrative changes in the operation of the courts. The State of California and Municipal Court Judge Fields, both of whom have intervened, object to the proposals made as unnecessarily intrusive on state interests.

For the reasons set forth below, the court hereby continues its injunction prohibiting Monterey County from holding elections for municipal court judges pending adoption and preclearance of a permanent plan, except the court orders that a special election be held in 1995 to protect the rights of the citizens to elect judges while a permanent legislative solution is being developed and precleared. The court-ordered special election will be held pursuant to an election area plan, specifically the "Municipal Court Division Plan" as described in the Second Stipulation presented to the court by plaintiffs and the County on January 13, 1994. The terms of the judges elected will expire on the first Monday in January 1997.

III. BACKGROUND

Prior to 1968, Monterey County had two municipal and seven justice court districts. By ordinances enacted by the County between 1968 and 1983, those districts were consolidated so as to provide for one municipal court district with judges elected at large from the entire county. The consolidation ordinances were subject to review under Section 5 of the Voting Rights Act and, on September 6, 1991, plaintiffs herein filed this Section 5 enforcement action seeking declaratory and injunctive relief requiring the County to seek preclearance of the ordinances before enforcing them further. Pursuant to 28 U.S.C. § 2284, the case was assigned to this three-judge court. On March 31, 1993, this court found that the ordinances did, in fact, require preclearance, that such preclearance had not been obtained, and that the ordinances could not be enforced without preclearance. In response to the court's order, the County, on August 10, 1993, filed a declaratory judgment action in the United States District Court for the District of Columbia to obtain after-the-fact preclearance of the ordinances. County of Monterey v. United States of America, No.

93-1639 (D.D.C. filed Aug. 10, 1993). That action was subsequently dismissed upon a stipulation that "[t]he Board of Supervisors is unable to establish that the Municipal Court Judicial Court Consolidation Ordinances adopted by the County between 1968 and 1983 did not have the effect of denying the right to vote to Latinos in Monterey County due to the retrogressive effect several of these ordinances had on Latino voting strength in Monterey County." Monterey County, Cal., Resolution 94-107 (March 15, 1994).

Monterey County and plaintiffs then agreed to the implementation of an "Election Area Plan" for the election of municipal court judges and requested that this court order the County to adopt the system. The Election Area Plan consisted of seven election areas which were specific geographic areas in which only the residents could vote. The areas were to be used solely for election purposes and there would remain only one county-wide municipal court district for all other purposes. The parties acknowledged that the plan might conflict with Article VI, Section 16(b) of the California Constitution, since it removed the linkage between a judge's electoral and jurisdictional bases. They asked the court to authorize the County to adopt the plan and the County stated that it would then seek preclearance. The State of California asked to intervene and objected to the issuance of an order authorizing the plan. The court, by order dated December 22, 1993, allowed the State to intervene and declined without prejudice to approve the proposed Election Area Plan because it was not satisfied that a plan necessarily had to conflict with the California Constitution in order to comply with the Voting Rights Act. Judge Michael S. Fields, a municipal court judge, was also allowed to intervene in his personal capacity.

On January 13, 1994 the County submitted a new stipulation and proposed order in response to the court's order of December 22, 1993. The new proposed plan, entitled "Municipal Court Division Plan," called for four divisions. The divisions, like the areas in the previously proposed Election Area Plan, were specific geographic areas in which only the residents could vote. The divisions were to be used solely for election purposes and not for assignment of cases,

court locations, or any other purpose. Plaintiffs and the County suggested that the Division Plan did not violate the state constitution, but requested the court to approve it even if it felt otherwise. The State and Judge Fields objected to acceptance of the Division Plan on the basis, among others, that it violated Article VI, Section 16(b) of the California Constitution, which requires that judges be elected in their counties or districts. In its order dated February 28, 1994 the court again stated that it was not satisfied that an election plan had to conflict with the California Constitution in order to meet the requirements of the Voting Rights Act and implicitly held that the Division Plan in fact did so conflict. The court further ordered that the County submit for preclearance an election plan that complied with the Voting Rights Act and all applicable provisions of the California Constitution and state law, or show cause why it could not do so.

On March 31, 1994, in a hearing to show cause, the County explained why it could not submit the requested plan for preclearance and referred to Board of Supervisors' Resolution 94-107, which made certain findings supporting the Board's conclusion that "[t]he Board of Supervisors is unable to devise or prepare any plan for the election of municipal court judges in Monterey County that does not conflict with at least one state law and still comply with the Voting Rights Act." On June 1, 1994 the court issued its order enjoining Monterey County from holding elections for municipal court judges pending adoption and preclearance of a plan for their election. The County was ordered to take the necessary steps to obtain changes in existing state law and county ordinances to effectuate such a plan. The parties were also ordered to appear on November 3, 1994 to report on their progress.

Following the court's order of June 1, 1994, the County made a good faith effort to secure passage of an amendment to the California Constitution regarding the configuration of municipal court districts in Monterey County. The efforts were unsuccessful for reasons that appear unrelated to any controversy regarding the proposed amendment. Plaintiffs and Monterey County now urge the court to allow elections to take place under the Municipal Court

Division Plan which they had proposed to the court on January 13, 1994. As an alternative, they ask that the court authorize the County to implement a plan which would include districts that split cities.

IV. ANALYSIS

> The final step for the three-judge court is to determine "what remedy is appropriate." Section 5 contemplates injunctive relief, which is by its nature equitable. Moreover, the Supreme Court has indicated that the three-judge court has some limited discretion in fashioning a remedy by directing that the court must fashion an "appropriate" remedy. *See e.g, Perkins v. Matthews*, 400 U.S. 379, 441, 91 S.Ct. 431, 441, 27 L.Ed. 2d 476 (1971) (questions of appropriate remedy for district court) ....

Brooks v. State Board of Education, 775 F. Supp. 1470, 1482 (S.D. Ga. 1989).

Since the County did not obtain preclearance for the consolidating ordinances it enacted after 1968, this court must enjoin elections under those ordinances. The question that remains then is how, under the existing circumstances, should the court further "fashion an appropriate remedy" under its equitable powers. A return to the system that was last in effect before the adoption of the unprecleared ordinances is impractical and no party seems to seriously advocate that even as an interim solution.[3] Continuance of the

---

[3] The last lower court district plan in effect at the time Monterey County became a covered jurisdiction consisted of two municipal districts, with two municipal court judges in each such district, and seven justice court districts with one justice court judge in each such district. Monterey County, Cal., Ordinance 1347, as amended by Ordinance 1597. In addition to resolving problems associated with the fact that seven of the districts were justice court

injunction without any election pending implementation of a precleared system would deprive the voters of their right to elect judges. Obviously, the court cannot overlook the importance of the citizens' right to elect judges while a permanent legislative solution is being developed and precleared. A memorandum dated January 11, 1994 from the Registrar of Voters shows that seven of the ten judicial offices would have been up for election in 1994 but for the preclearance problem and the court's injunction. As noted in Wise v. Lipscomb, 437 U.S. 535, 540, 98 S. Ct. 2493, 2497 (1978) (citation omitted):

> Legislative bodies should not leave their reapportionment tasks to the federal courts; but when those with legislative responsibilities do not respond, or the imminence of a state election makes it impractical for them to do so, it becomes the "unwelcome obligation" of the federal court to devise and impose a reapportionment plan pending later legislative action.

Therefore, the court concludes that its remedy must allow for an election pending the implementation of a permanent legislative solution. See Berry v. Doles, 438 U.S. 190, 98 S.Ct. 2692 (1978) (suggesting that a special election could be considered by the district court if Section 5 approval was not obtained for a voting change). The interim election plan shall call for a special election in 1995 that is not unduly intrusive on state law and policies and not unreasonably disruptive to the County's interests in effective and efficient delivery of municipal court services. Under the Supremacy Clause, the

---

districts and the total number of municipal court judges is now ten, the districts would have to wrestle with the fact that several of the districts would be very small. This would undoubtedly result in administrative problems including frequent assignment of judges to districts other than their own.

implementation of relief for a violation of the Voting Rights Act must take precedence over enforcement of state law that stands in the way of effective relief. See Katzenbach v. Morgan, 384 U.S. 641, 646-47 (1966). The terms of those elected, however, will expire on the first Monday in January 1997, so that the County understands that it must have a permanent solution in effect by the time of the next general election or it will risk being without judges.

The court is satisfied that there are only two viable alternatives for an interim, emergency election plan.[4] One is to authorize the County to implement an interim plan which includes districts that split the City of Salinas. This would require the court to "suspend" application of Article VI, Section 5 of the California Constitution in order to allow compliance with the Voting Rights Act. This approach is favored by the State and Judge Fields over the second alternative discussed below, although the State contends that there is no basis for the court to relieve the County from any of the state's constitutional restrictions.[5]

---

[4] The court does not imply that the consolidation ordinances which the court found had not been precleared necessarily resulted in a voting procedure that violates Section 2 of the Voting Rights Act (42 U.S.C. 1973(a)), i.e. that the voting procedure results in a denial of the right of any citizen to vote on account of race or color. While evidence has been offered to that effect by the stipulation between plaintiffs and defendant County, this court has not made such a finding. However, the court is reluctant to consider a single district, county-wide election plan as a temporary remedy in light of the supported stipulation that such a plan would be retrogressive in terms of Latino voting strength.

[5] The State's brief is not clear as to whether the State believes that the court has no basis for relieving the County from any of the State's constitutional restrictions on a temporary basis or whether it only objects to the court's attempting to give some sort of permanent authorization to violate state law. The court agrees with the State that

The other alternative is to permit the County to implement a temporary election plan that is predicated on the Municipal Court Division Plan such as described in the Second Stipulation submitted to the court in January 1994. Under this plan, a judge's jurisdictional and electoral bases would not be coterminous. This plan would require the "suspension" of Article VI, Section 16(b) of the California Constitution. It would also require the splitting of the City of Salinas.

The court has considered in analyzing alternatives for an interim plan the recent en banc decision in Nipper v. Smith, No. 92-2588, 1994 WL 642754 (11th Cir. Dec. 2, 1994), in which black voters and an association of black attorneys contended that the use of at-large elections in trial court jurisdictions diluted the voting strength of the black minority in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973(a). The court found that plaintiffs had established vote dilution, but that none of the remedies sought provided an objectively reasonable and workable solution to the vote dilution and that they would actually undermine the court's ability to administer justice. Id. at *47-51. The proposed remedies included alternatives of electoral subdistricts and the creation of new circuits which would contain sufficient black voters to enable them to elect a

---

any attempt to give the County approval to violate existing state law on a permanent basis is, at this time, beyond the scope of this court's function. However, temporary relief is necessary to enable elections to go forward at this time without violating the Voting Rights Act. The State's suggestion that an election with shortened terms of office coupled with periodic reports to the court would be a less drastic solution does not address the question of under what plan such an election would take place. As noted earlier, no party seems to question the County's assertion that it is not now feasible to return to the status quo ante. In fact, any attempted return to the districts existing in 1968, the date of the last lawful judicial district map adopted the Board of Supervisors, would result in judges being frequently and regularly assigned outside their districts.

candidate of their choice.

In the present case, the court is not faced with deciding whether a voting scheme violates Section 2. It is presented with the problem of what interim solution should be implemented pending the legislative enactment of a precleared voting plan. Evidence has been offered that Latino voters have had their voting strength diluted and, therefore, a special election under an at-large system would probably preclude them from electing any judge of their choice. On the other hand, persuasive evidence has not been offered that the court's ability to administer justice would be undermined by the two alternatives under consideration. The court, however, acknowledges that ultimately an at-large system or a system different from either of the two proposed alternatives may prove, under the totality of circumstances, to be the best judicial election scheme.

The prohibition against dividing a city into more than one district is set forth in Article VI, Section 5(a) of the California Constitution which provides in part: "Each county shall be divided into municipal court and justice court districts as provided by statute, but a city may not be divided into more than one district."[6] The State's interest in preventing the division of cities does not appear to reflect any compelling state policy. In fact, the City of San Diego has been specifically authorized to divide cities if "the Legislature determines that unusual geographic conditions warrant such division." Cal. Const. art. VI, § 5(b). However, the creation of a multidistrict plan in Monterey County would require substantial administrative changes which would necessarily include reassignment of personnel, setting up new administrative procedures and the like. Further, these changes might be in effect for only the time period preceding the adoption of a permanent precleared plan. The court, therefore, finds that while a one-time, temporary suspension of the application of the city splitting prohibition would not interfere with a compelling state interest,

---

[6] California Government Code Section 71040 similarly prohibits the dividing of a city so that it lies within more than one district.

implementation of a temporary multidistrict municipal court district plan would significantly interfere with the County's ability to provide uninterrupted efficient and effective delivery of municipal court services.

The proposed division plan allows the County to continue administratively operating the municipal courts in the county as it currently does. The problem, of course, is that the plan involves a separation of the electoral and jurisdictional bases of municipal court judges. Article VI, Section 16 provides that "[j]udges of [municipal] courts shall be elected in their counties or districts at general elections." Therefore, this division or election area plan denies residents of the Monterey County Municipal Court District the right to vote for some of the judges in the county-wide district. At first glance, this would seem to constitute a substantial intrusion on state interests. As the State points out, historically, municipal and small claims courts have been intended to be responsive to the ordinary affairs of the citizens of their districts.[7] Several courts have noted that linkage between electoral and jurisdictional bases is a recognized state interest: "The overwhelming preservation of linkage in states that elect their trial court judges demonstrates that district-wide elections are integral to the judicial office and not simply another electoral alternative." League of United Latin American Citizens v. Clements, 999 F.2d 831, 872 (5th Cir. 1993); see also Nipper v. Smith, 1994 WL 642754 at *47-51.

---

[7] The State also contends that the implementation of the division plan proposed by plaintiffs would raise many questions about the authority and status of "election area" judges. These concerns seem somewhat unfounded, since the proposal only concerns the election process and does not otherwise attempt to affect the authority and status of the judges. Further, the plan is not being implemented as a legislative solution to the existing Voting Rights Act problem facing the County, but is rather being implemented by the court as an interim, emergency solution to insure the voters' right to elect municipal court judges.

However, on closer analysis the intrusion on state law does not seem as substantial as it initially appears. The process of municipal courts extends throughout the state, Cal. Civ. Proc. Code § 84, and, therefore, the jurisdiction of a municipal court judge extends outside the geographic limits of the judge's district. In addition, Article VI, Section 15 of the California Constitution provides that "[a] judge eligible for municipal court service may be assigned by the Chief Justice to serve on any court." This provision authorizes the Chief Justice to assign municipal court judges from one municipal court district to serve in other municipal court districts. Sometimes the Chief Justice issues "blanket assignments." As noted in the 1994 Annual Report of the Judicial Council of California:

> Blanket (within county) and reciprocal (between counties) assignments are issued each year by the Chief Justice to permit judges of one court to sit as judges of another court within their county or in a neighboring county. A total of 193 blanket assignments and 73 reciprocal assignments were issued during fiscal year 1992-93.

Judicial Council Report at 167.

These facts show that in practice the rights of nonresidents are often judged by resident judges. Also, nonresident judges are frequently assigned to other districts. Therefore, as a practical matter, linkage between a judge's electoral and jurisdictional bases cannot be considered an overwhelmingly strong public policy. The district court in Cousin v. McWherter, 840 F. Supp. 1210, 1220 (E.D. Tenn. 1994) so recognized in holding that the use of a single, at-large district for election of voters violated the Voting Rights Act:

> The Court finds that this policy underlying the practice of county wide election for judges is tenuous if a totality of circumstances test is utilized. Any voter in any number of different situations may be subjected

> to the jurisdiction of a judge for which they had no opportunity to vote such as a federal judge, or a judge in another county or another state. Judges routinely respond to litigants who will not have the opportunity to vote for the judge in an election. There is never a guarantee that jurisdiction and electorate will be coextensive.

The dissenting judges in Nipper also questioned the importance of linkage as a component of state policy. Nipper v. Smith, 1994 WL 642754 at *61-62. Although an election division plan as proposed will undoubtedly cause more parties to have their cases heard by judges who did not elect them, there is no strict linkage presently existing in California courts.

The concern of the State and Judge Fields that an election area plan may violate the Equal Protection clause of the Fourteenth Amendment seems unfounded. No case has been cited which comes to that conclusion. However, several courts have remedied violations of Section 2 of the Voting Rights Act in cases involving at-large or circuit-wide judicial election systems by ordering the use of election sub-districts that are not coterminous to the jurisdictional bases of the elected judges. See Clark v. Roemer, 777 F. Supp. 471 (M.D. La. 1991), appeal dismissed, 958 F.2d 615 (5th Cir. 1992) (Louisiana trial and appellate courts); Martin v. Mabus, 700 F. Supp. 327 (S.D. Miss. 1988) (circuit, chancery, and some county court judges); and Hunt v. Arkansas, No. 89-406 (E.D. Ark. Nov. 7, 1991) (consent decree concerning trial courts of general jurisdiction).

The court, therefore, concludes that the Municipal Court Division Plan, as an interim plan, minimally intrudes on state interests and enables the County to maintain its current administrative operation of the municipal courts while it is working for a permanent legislative solution to its Voting Rights Act problem.[8] The calendar

---

[8] The court does not intend by this order to pass judgment on the merits of the proposed election area plan as a potential permanent plan. That judgment is best left to legislators.

for such an election is set forth in the memorandum of the Registrar of Voters to County Counsel dated October 4, 1994 (Appendix A).

Although a federal court's authorization of the emergency, interim use of a court-created election plan does not normally require preclearance, see 28 C.F.R. § 51.18(c), such preclearance is required when the covered jurisdiction submits a proposal reflecting its policy choices irrespective of what constraints have limited the choices available to it. McDaniel v. Sanchez, 452 U.S. 1128, 101 S. Ct. 2224 (1981). Since the court-ordered plan here is based upon a proposal submitted by the County, the County may be statutorily required to seek preclearance of the plan, even though it is only an interim, court-directed plan. This should present no obstacle, however, as the Attorney General is apparently prepared to give expedited approval. Amicus Curiae Brief of the United States dated May 13, 1994, at 9 n. 10.

V. ORDER

1. Monterey County is ordered to develop a permanent plan for the election of municipal court judges which complies with the Voting Rights Act and does not violate state law. The County shall take any steps required to obtain changes in existing state law and county ordinances.

2. Monterey County is hereby enjoined from holding elections for municipal court judges pending adoption and preclearance of a permanent plan or further order of this court.

3. Notwithstanding paragraph 2 above, the County shall implement as a court-ordered, emergency, interim plan for a special election in 1995 the election plan set forth in the Second Stipulation presented to the court by Plaintiffs and the County on January 13, 1994 with a new election calendar as set forth in the memorandum of the Registrar of Voters to the County Counsel dated October 4, 1994.

The terms of office of those elected pursuant to the interim plan shall expire on the first Monday in January 1997. The court foresees that a permanent, precleared plan will be implemented in time for the next general election in 1996. The court retains jurisdiction over the implementation of the court-ordered, interim plan.

Dated: 12/20/94

/s/

Ronald M. Whyte
United States District Judge
On Behalf of the Panel

Filed
Nov. 30, 1995
Richard W. Wieking
Clerk, U.S. District Court
Northern District of California
San Jose

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, JESSE G. SANCHEZ, and DAVID SERENA, Plaintiffs, v. MONTEREY COUNTY, CALIFORNIA, Defendant. STATE OF CALIFORNIA, Intervenor-Defendant.	NO. C-91-20559-RMW Voting Rights Action Three Judge Court ORDER DENYING MOTION FOR RECONSIDERATION

The motion for reconsideration is denied. The court's Order Modifying Injunction filed November 1, 1995 was not based on any assumption that county-wide elections for municipal court judges had been precleared. The order reflects what the court believes is the appropriate temporary, equitable remedy pending preclearance of a plan that complies with the Voting Rights Act and does not violate state law.

DATED: November 30, 1995

/s/

JAMES WARE
United States District Judge
For the Panel

Joaquin G. Avila
Parktown Office Building
1774 Clear Lake Avenue
Milpitas, California
95035-7014
(408) 263-1317
California State Bar
Number 56484

Prof. Barbara Y. Phillips
University of Mississippi
Law School
University, Mississippi
38677
(601) 232-7361
California State Bar
Number 111135

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ, and DAVID SERENA, Plaintiffs, v. MONTEREY COUNTY, CALIFORNIA, STATE OF CALIFORNIA, Defendants, STEPHEN A. SILLMAN Intervenor.	Civil Action No. C-91-20559-RMW (EAI) Voting Rights Action Three Judge Court Circuit Judge Mary M. Schroeder District Judge James Ware District Judge Ronald M. Whyte

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Vicky M. Lopez, Crescencio Padilla, William A. Melendez, and David Serena, the Plaintiffs'[1] above-named, hereby appeal to the Supreme Court of the United States from the Order Modifying Injunction entered in this action on November 9, 1995.

This appeal is taken pursuant to Title 28, United States Code, Section 1253.

Dated: November 30, 1995.

JOAQUIN G. AVILA
BARBARA Y. PHILLIPS

By:

/s/

JOAQUIN G. AVILA
Attorney for Plaintiffs

[1] Jesse M. Sanchez passed away on August 2, 1995, and will not be listed as party in these appellate proceedings.

Seal of the United States Department of Justice

U.S. Department of Justice

Civil Rights Division

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

November 13, 1995

Douglas C. Holland, Esquire
Monterey County Counsel
P. O. Box 1587
Salinas, California 93902-1587

Joaquin G. Avila, Esquire
Parktown Office Bldg.
1774 Clear Lake Avenue
Milpitas, California 95035-7014

Re: Lopez, et al. v. County of Monterey, California, No. C-91-20559-RMW (N.D.Cal.)(three-judge court)

Dear Messrs. Holland and Avila:

This letter is in response to recent inquires we have received from each of you concerning the status under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, of a variety of voting changes related to the above-referenced case. This letter will address the scope of our March 6, 1995, preclearance letter and the Section 5 status of Cal. Stat. 1979 ch. 694 ("Chapter 694") and Cal. Stat. 1989 ch. 608 ("Chapter 608").

With regard to our March 6, 1995, preclearance of the interim election plan for the election of municipal court judges in Monterey

County (File Nos. 95-0023, 95-0507, 95-0619, and 95-0620), we understand that this Section 5 determination was discussed at the September 28, 1995 status conference in the above-referenced case. Contrary to representations that apparently were made at that status conference, the at-large method of election for the municipal court judges in Monterey County was never submitted for Section 5 review, and it has not been precleared.

On January 3, 1995, Monterey County submitted for Section 5 preclearance an interim election plan that provided for a 1995 special election at which Monterey County municipal court judges would be elected from electoral subdistricts (termed "divisions"). See Attachment A (December 29, 1994 Letter from Douglas C. Holland to Sarabeth Donovan). The county's submission letter requested that the Attorney General review Resolution No. 94-523 of the Monterey County Board of Supervisors, which formally adopted the interim election plan "consistent with the Second Stipulation presented to the United States District Court for the District of California in the Lopez case by Plaintiffs and the County on January 13, 1994." Id. Resolution 94-523 specified that the interim election plan would consist of "one [county-wide] Municipal Court District" with four judicial divisions "used solely for the purpose of electing municipal court judges." Id.[1]

On March 6, 1995, the Attorney General precleared the interim election plan. This included not only a special election schedule, the "division" method of election, a districting plan for divisions, and terms of office, but also, for purposes of implementing the interim method of election, "the consolidation of the municipal and justice courts that existed on November 1, 1968, into a single

---

[1] The county amended its submission by letter dated January 10, 1995, making changes to the proposed special election procedures; however, the operative language cited in the text was unchanged. See Attachment B (January 10, 1995 Letter from Douglas C. Holland to Sarabeth Donovan).

municipal court" and a tenth judgeship. See Attachment C (March 6, 1995 Letter from Deval L. Patrick to Douglas C. Holland, Esq.); see also Attachment D (March 6, 1995 Fax Cover Page from Leroy W. Blakenship to Mr. Mark Posner - DOJ)(requesting the Attorney General review the tenth municipal court judgeship as part of the interim plan).

As indicated in its December 29, 1994 submission letter, the county's Section 5 submission was limited to those changes that were part and parcel of the interim election plan, "consistent with the [December 20, 1994] order of the court." See Attachment A.[2] While the county sought and obtained preclearance for the consolidation and the tenth judgeship as they pertain to the interim plan, it did not seek preclearance for a permanent consolidation or creation of a permanent tenth judgeship as effectuated by the post-November 1, 1968 ordinances at issue in the Lopez litigation. Moreover, the county did not in any way seek preclearance for the at-large method of election.[3]

---

[2] It is well established that the submission of legislation for Section 5 preclearance defines the scope of the preclearance request. Clark v. Roemer, 500 U.S. 646, 656 (1990) (citing McCain v. Lybrand, 465 U.S. 236 (1984)). Therefore, it is the responsibility of the jurisdiction to identify each change with specificity in the submission. Any ambiguity as to what is being submitted "must be resolved against the submitting authority." Id.

[3] The manner in which the Attorney General's March 6, 1995, preclearance letter was formatted may well have allowed for some confusion as to what changes were precleared. The preclearance letter refers to the "interim election plan," "the consolidation of the municipal and justice courts," "the establishment of a tenth municipal court judgeship," the districting plan for divisions, the terms of office of persons elected as municipal court judges, and the procedures for conducting the special election and run-off, in separately numbered paragraphs. However, as explained above, all of these changes pertain to the 1995 interim election plan.

Under the Attorney General's Procedures for the Administration of Section 5, it was procedurally appropriate for the Attorney General to preclear the consolidation and tenth judgeship (i.e., a county-wide municipal court district) in the context of the interim election plan, as a necessary step for the implementation of that plan. See Procedures for the Administration of Section 5, 28 C.F.R. 51.22. However, the interim election plan ordered by the Lopez Court on December 20, 1994, implicitly recognized that such an interim consolidation of the municipal court was severable from the at-large election method contained in the county ordinances at issue in Lopez. That Court Order led the county to seek preclearance for the interim "division" election plan and the other changes necessary to implement that plan, and the Attorney General then precleared only those changes in light of the interim plan. Thus, it is clear from the submission letter that the at-large method of election was never submitted for Section 5 review, and the March 6, 1995, preclearance letter demonstrates that the Attorney General did not review or preclear the at-large method of election.

With regard to the inquiry concerning the Section 5 status of any voting changes occasioned by Chapter 694 (1979) and Chapter 608 (1989), we have investigated whether any such voting changes have been submitted for Section 5 review. We note that there is considerable uncertainty as to whether these two California state statutes actually effectuate voting changes or simply recognize and codify voting changes already effectuated by county ordinances at issue in the Lopez case.

Our records fail to show that any voting changes occasioned by Chapter 694 (1979) (recognizing the consolidation of Monterey County municipal court and some justice court districts) have been submitted for Section 5 review either to the United States District

Court for the District of Columbia or to the Attorney General. Our records do show that any voting changes caused by Chapter 608 (1989) (recognizing the creation of a 10th municipal court judgeship in Monterey County, California) were submitted to the Attorney General for Section 5 review, along with other state statutes, on January 9, 1990. See Attachment E (January 2, 1990 Letter from Caren Daniels-Meade to Chief, Voting Section). On March 12, 1990, we informed the State of California that we would make no determination with regard to any voting changes caused by Chapter 608 (1989), and explained that a related change, contained in the Monterey County ordinance (No. 88-597), creating the tenth municipal court judgeship, had not been submitted to the District Court for the District of Columbia or to the Attorney General for Section 5 review. See Attachment F (March 12, 1990 Letter from James P. Turner to Ms. Caren Daniels-Meade). We explained in our letter that it was necessary that the voting changes in both the state statute and county ordinance be reviewed simultaneously. See 28 C.F.R. 51.22(b) and 51.35. On the same day, we sent a letter to Monterey County requesting that the voting changes occasioned by the referenced ordinance be submitted for preclearance. See Attachment G (March 12, 1990 Letter from James P. Turner to Ms. Nancy Lukenbill). As explained above, the permanent voting changes occasioned by Monterey County Ordinance No. 88-597 (and particularly the at-large method of election for the new judgeship) have never been submitted for Section 5 review, although they are at issue in Lopez.

As you know, changes in procedure which affect voting are legally unenforceable unless Section 5 preclearance has been obtained. See Procedures for the Administration of Section 5 (28 C.F.R. 51.2, 51.10, 51.12, 51.13, and 51.23). It appears that any voting changes occasioned by Chapter 694 (1979) and Chapter 608 (1989) are directly related to the voting changes occasioned by Monterey County ordinances at issue in Lopez. Therefore, prior to any further implementation, all these changes should be submitted for either

administrative or judicial Section 5 review simultaneously by the county.

To enable us to fulfill our responsibilities under Section 5, we request that Monterey County inform us of any action it plans to take concerning this matter. If you have any questions, you should call Cal G. Gonzales (202-514-6450), an attorney in the Voting Section.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

By: /s/

Elizabeth Johnson
Acting Chief, Voting Section

cc: Counsel of Record

MONTEREY COUNTY Section 5 Sub. No. 950023 Monterey County Seal
OFFICE OF THE COUNTY COUNSEL

(408) 755-5045 - P.O. BOX 1587, COURTHOUSE, SALINAS, CALIFORNIA 93902-1587
FAX NO. (408) 755-5283

DOUGLAS C. HOLLAND
COUNTY COUNSEL

December 29, 1994.

Sarabeth Donovan.
Deputy Attorney General
Voting Section
Civil Rights Division
Department of Justice
P.O. Box 66128
Washington, D.C. 20035-6128

Re: Monterey County Municipal Court Plan of Organization
Lopez et al. v. County of Monterey, Case No C-91-20559
RMW (EAI)

Dear Ms. Donovan:

As you are now aware, the Federal District Court for the Northern District of California on December 20, 1994 issued an interim order in the Lopez case. The Court ordered the County to develop a permanent plan for the election of municipal court judges consistent with the Voting Rights Act and state laws and enjoined the County from holding elections for municipal court judges pending adoption and preclearance of a permanent plan. The Court, however, specifically instructed the County to "implement as a court-ordered,

ATTACHMENT A

emergency, interim plan for a special election in 1995 the election plan set forth in the Second Stipulation" which the plaintiffs and the County had submitted to the Court on January 13, 1994.

The relief the Court granted was essentially the relief that Mr. Avila, you, and this Office requested at the status conference in November of 1994.

The Board of Supervisors, which was in session at the time the court order was received, reviewed the court order and adopted Resolution No. 94-523, adopting an emergency, interim municipal court division plan and calling for a special election to be conducted June 6, 1995. The Board's action was entirely consistent with the order of the court. A copy of the Board's resolution is attached for your reference and review.

On behalf of the County, we are requesting that your Office review this resolution pursuant to the provisions of Section 5 of the Voting Rights Act and preclear this action of the Board of Supervisors so that the Court's order can be fully implemented and the scheduled elections can proceed.

We must emphasize that we are not convinced that this matter actually needs to be precleared. We believe that the Board's resolution was essentially an administrative act ordered by and consistent with an order of the Court. The Board did not have any discretion to do anything but adopt the resolution as required by the Court. The Board action should not be viewed as an act of legislative discretion.

We should also emphasize that the Board, in its stipulation as presented to the Court in January of 1994, did not approve or adopt any specific plan. The stipulation simply outlined certain components that the County and the plaintiffs requested the Court to include in any subsequent order. We have taken the liberty of including a copy of the January stipulation for your review. The Board did not see any

specific plan consistent with the stipulation until the Board's March meeting in response to an earlier order to show cause issued by the Court. The specific plan was presented to the Board solely for informational purposes and as part of a total package of various plan alternatives to demonstrate the inability of the County to adopt a plan that would be consistent with the Voting Rights Act and all state laws. A copy of the Board's March action is also included for your review. The Board did not adopt any specific municipal court election plan until ordered to do so by the Court on December 20, 1994.

We should also point out that the basic plan as adopted by the Board was originally prepared by Mr. Avila on behalf of the plaintiffs. The boundaries of the Court Divisions 1 and 2 were entirely prepared at Mr. Avila's direction. It is also our understanding that the plaintiffs in this case are completely supportive of the election plan as adopted by the Board at the direction of the Court.

We are of course requesting that you provide expedited review of this submission. Your Office has had the opportunity to review a great deal of documents related to this case and the entire municipal court organization situation in Monterey County as a result of its participation in this case and the related District Court of Columbia case that Monterey County filed in 1993. Thus, we assume that you have everything that you require to review and consider this matter if your office determines that preclearance is warranted. If you need any further information or if we can provide you with any assistance of any kind, please do not hesitate to give us a call.

We especially want to thank you and your Office for your assistance in securing this favorable ruling from the Court. We don't believe that we would have enjoyed this success without your participation and involvement.

Have happy and prosperous New Year.

/s/
Douglas C. Holland
County Counsel

Before the Board of Supervisors in and for the County of Monterey, State of California

Resolution No. 94 - 523 –)
Resolution of the Monterey County Board)
of Supervisors Adopting an Emergency,)
Interim Municipal Court Division Plan, and)
Calling a Special Election to be Conducted)
June 6, 1995, Pursuant to Order of the)
United States District Court.....)

The Board of Supervisors of Monterey County, California, finds:

1. On December 20, 1994, the United States District Court for the Northern District of California filed its "Order Enjoining Elections Pending Preclearance of Permanent Plan Except for Court-Ordered Special Election in 1995" in the case of Lopez v. Monterey County, California, Case No. C 91-20559 RMW (EAI), which provides that:

1.1. "Monterey County is ordered to develop a permanent plan for the election of municipal court judges which complies with the Voting Rights Act and does not violate state law. The County shall take any steps required to obtain changes in existing state law and county ordinances."

1.2. "Monterey County is hereby enjoined from holding elections for municipal court judges pending adoption and preclearance of a permanent plan or further order of this court."

1.3. "Notwithstanding paragraph [1.2] above, the County shall implement as a court-ordered, emergency, interim plan for a special election in 1995 the election plan set forth in the Second Stipulation presented to the court by

Plaintiffs and the County on January 13, 1994 with a new election calendar as set forth in the memorandum of the Registrar of Voters to the County Counsel dated October 4, 1994. The terms of office of those elected pursuant to the interim plan shall expire on the first Monday in January 1997. The court foresees that a permanent, precleared plan will be implemented in time for the next general election in 1996. The court retains jurisdiction over the implementation of the court-ordered, interim plan."

2. The Board of Supervisors hereby finds that it is compelled by the foregoing federal court order to adopt an emergency, interim plan for the special election of municipal court judges; that the emergency, interim plan must conform to the Municipal Court Division Plan set forth in the Second Stipulation presented to the court by Plaintiffs and the County on January 13, 1994; that a special election be called for June 6, 1995 for election of municipal court judges pursuant to the Municipal Court Division Plan; and that the special election be conducted pursuant to the expedited election calendar as set forth in the memorandum of the Registrar of Voters to the County Counsel dated October 4, 1994.

Now, therefore, be it resolved that:

1. The Board of Supervisors of Monterey County, California hereby adopts an emergency, interim Municipal Court Division Plan (the "Plan") for a special election in 1995, consistent with the Second Stipulation presented to the United States District Court for the Northern District of California in the Lopez case by Plaintiffs and the County on January 13, 1994, as follows:

1.1. There will be one Municipal Court District. This District will be county-wide. All municipal court judges, regardless of residency or division area, will serve the entire county and can be assigned to any judicial assignment or any

court location. Assignments will be made without regard to residency or division area. For the purpose of this Plan, the term "district" is and shall be the "district" referred to in Section 5 of Article VI of the Constitution of the State of California and Chapters 6 and 8 of Title 8 of the Government Code of the State of California.

1.2. The Plan shall consist of four divisions. A division will be a specific geographic area in which only the persons residing may vote. These judicial divisions shall be used solely for the purpose of electing municipal court judges. These divisions shall not be used for any other purpose, including, but not limited to, the assignment of cases or court locations. Three of the divisions will be one judge divisions. The fourth division shall consist of seven judges. For the purpose of election of judges, the term "division" as used in this Plan is and shall be the "district" referred to in subdivision (b) of Article VI of the Constitution of the State of California.

1.2.1. A summary table of the Plan setting forth the total population, voting age population, and estimated population of voting age citizens within each division is attached to this resolution and incorporated herein by reference.

1.2.2. The boundaries of the divisions shall be as set forth in the maps attached to this resolution and incorporated herein by reference. The County Counsel, after consultation with legal counsel for the Lopez Plaintiffs, may make minor adjustments to the boundary lines of any division in the event that such changes may be necessary or appropriate and do not conflict with the requirements of the Voting Rights Act.

1.2.3. Divisions 1, 2, and 3 as shown on the attached maps shall be one judge divisions. Division 4 as shown on the attached maps shall consist of seven judges. For purposes of this Plan, the Board of Supervisors hereby designates the following judges to the divisions specified:

Division 1:	Judge Burleigh's seat
Division 2:	Judge Fields' seat
Division 3:	Judge Simmons' seat
Division 4:	Judge Curtis' seat
	Judge Hedegard's seat
	Judge Kingsley's seat
	Judge Scott's seat

1.2.4. Municipal court judges elected at the special election shall take office upon certification of election results by the Registrar of Voters, or as soon thereafter as practicable, and shall hold office under the Plan until the first Monday in January, 1997 pursuant to federal court order.

1.3. The Plan shall comply with the requirements of the Voting Rights Act.

2. The Board of Supervisors hereby calls a special election in the County of Monterey for the election of municipal court judges pursuant to the Plan. The special election shall be conducted on June 6, 1995, and the schedule of election activities shall be as set forth in the memorandum of the Registrar of Voters to the County Counsel dated October 4, 1994, a copy of which is attached to this resolution and incorporated herein by reference.

2.1. The special election for municipal court judges shall be a single, "winner-take-all" election where the

candidate receiving the highest number of votes for each office shall be declared the winner, regardless of whether such candidate receives a simple majority or a plurality of votes case for the office.

2.2. The Registrar of Voters is hereby directed and authorized to perform such duties as may be required by law, necessary or useful, or customary and appropriate in the conduct of the special election, so long as not inconsistent with the schedule of election activities attached hereto.

2.3. The precincts, polling places for said precincts, and persons appointed and designated to serve as election officers for said special election will be those determined, designated, and appointed pursuant to state law by the Registrar of Voters.

2.4. This special election may be consolidated with such other elections as may be held on June 6, 1995, under state law with the County of Monterey.

////

////

////

PASSED AND ADOPTED on this 20th day of December, 1994, upon motion of Supervisor Karas, seconded by Supervisor Salinas, by the following vote, to wit:

AYES: Supervisors Salinas, Shipnuck, Perkins, Johnsen and Karas.

NOES: None.

ABSENT: None.

I, ERNEST K. MORISHITA, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof at page -- of Minute Book 68, on December 20, 1994.

Dated: December 20, 1994

ERNEST K. MORISHITA, Clerk of the Board of Supervisors, County of Monterey, State of California.

By _____/s/_____
[Nancy Lukenbill] Deputy

MONTEREY COUNTY
OFFICE OF THE COUNTY COUNSEL

Monterey County Seal

(408) 755-5045 - P.O. BOX 1587, COURTHOUSE, SALINAS, CALIFORNIA 93902-1587
FAX NO. (408) 755-5283

DOUGLAS C. HOLLAND
COUNTY COUNSEL

January 10, 1995

Sarabeth Donovan
Attorney
Voting Section
Civil Rights Division
Department of Justice.
P.O. Box 66128
Washington, D.C. 20035-6128

Re: Monterey County Municipal Court Plan of Organization
Lopez et al. v. County of Monterey, Case No C 91-20559 RMW (EAI)

Dear Ms. Donovan:

The Federal District Court for the Northern District of California on January 10, 1995 issued an order clarifying its order of December 20, 1994 in the Lopez case. In its December 20, 1994 order, the Court ordered the County to develop a permanent plan for the election of municipal court judges consistent with the Voting Rights Act and state laws and enjoined the County from holding elections for municipal court judges pending adoption and preclearance of a permanent plan.

ATTACHMENT B

In addition, the Court, specifically instructed the County to "implement as a court-ordered, emergency, interim plan for a special election in 1995 the election plan set forth in the Second Stipulation" which the plaintiffs and the County had submitted to the Court on January 13, 1994.

The relief the Court granted was essentially the relief that Mr. Avila, you, and this Office requested at the status conference in November of 1994.

On January 10, 1995, the Court also clarified its previous order by advising us that the County should conduct primary elections and, if a candidate is unable to achieve a majority vote in the primary election, provide for appropriate run-off elections.

The Board of Supervisors, as it did when it adopted its Resolution No. 94-523, was in session at the time the court clarification was received, reviewed the court order, and adopted Resolution No. 95-025, amending Resolution No. 94-523 in its entirety and adopted an emergency, interim municipal court division plan calling for a special primary election to be conducted on June 6, 1995. Resolution No. 95-025 also calls for a special, run-off election for August 1, 1995 for each municipal court seat where no candidate receives a majority vote at the primary election.

Resolution No. 95-025 also provides that judges elected to office at the special, primary election or at the special, run-off election may take office upon certification of the applicable election results by the Registrar of Voters.

The Board's action was entirely consistent with the order of the court. A copy of the Board's resolution is attached for your reference and review.

On behalf of the County, we are requesting that your Office review

this resolution pursuant to the provisions of Section 5 of the Voting Rights Act and preclear this action of the Board of Supervisors so that the Court's order can be fully implemented and the scheduled elections can proceed.

We must emphasize again that we are not convinced that this matter actually needs to be precleared. We believe that the Board's resolution was essentially an administrative act ordered by and consistent with the orders of the Court. The Board did not have any discretion to do anything but adopt the resolution as required by the Court. The Board action should not be viewed as an act of legislative discretion.

In the event that you do undertake to review this matter for preclearance, we would renew our request for expedited review of this submission. As we discussed in previous correspondence, your Office has had the opportunity to review a great deal of documents related to this case and the entire municipal court organization situation in Monterey County as a result of its participation in this case and the related District Court of Columbia case that Monterey County filed in 1993. Thus, we assume that you have everything that you require to review and consider this matter if your office determines that preclearance is warranted. If you need any further information or if we can provide you with any assistance of any kind, please do not hesitate to give us a call.

/s/
Douglas C. Holland
County Counsel

Before the Board of Supervisors in and for the County of Monterey, State of California

Resolution No. 95 - 025 –)
Resolution of the Monterey County Board)
of Supervisors Amending Resolution)
No. 94-523 Providing for an Emergency)
Interim Municipal Court Division Plan,)
Calling a Special Primary Election)
to be Conducted June 6, 1995, and)
Providing for a Special Run-Off Election)
to be Conducted on August 1, 1995,)
Pursuant to Order of the)
United States District Court.....)

The Board of Supervisors of Monterey County, California, finds:

1. On December 20, 1994, the United States District Court for the Northern District of California filed its "Order Enjoining Elections Pending Preclearance of Permanent Plan Except for Court-Ordered Special Election in 1995" in the case of Lopez v. Monterey County, California, Case No. C 91-20559 RMW (EAI), which provides that:

> 1.1. "Monterey County is ordered to develop a permanent plan for the election of municipal court judges which complies with the Voting Rights Act and does not violate state law. The County shall take any steps required to obtain changes in existing state law and county ordinances."
>
> 1.2. "Monterey County is hereby enjoined from holding elections for municipal court judges pending adoption and preclearance of a permanent plan or further order of this court."

1.3. "Notwithstanding paragraph [1.2] above, the County shall implement as a court-ordered, emergency, interim plan for a special election in 1995 the election plan set forth in the Second Stipulation presented to the court by Plaintiffs and the County on January 13, 1994 with a new election calendar as set forth in the memorandum of the Registrar of Voters to the County Counsel dated October 4, 1994. The terms of office of those elected pursuant to the interim plan shall expire on the first Monday in January 1997. The court foresees that a permanent, precleared plan will be implemented in time for the next general election in 1996. The court retains jurisdiction over the implementation of the court-ordered, interim plan."

2. The Board of Supervisors hereby finds that it is compelled by the foregoing federal court order to adopt an emergency, interim plan for the special election of municipal court judges; that the emergency, interim plan must conform to the Municipal Court Division Plan set forth in the Second Stipulation presented to the court by Plaintiffs and the County on January 13, 1994; that a special election be called for June 6, 1995 for election of municipal court judges pursuant to the Municipal Court Division Plan; and that the special election be conducted pursuant to the expedited election calendar as set forth in the memorandum of the Registrar of Voters to the County Counsel dated October 4, 1994.

3. In addition, the Board of Supervisors finds that conducting the special election on June 6, 1995 as a primary election, with a special run-off election to be conducted on August 1, 1995, if such run-off election is necessary, is consistent with the Voting Rights Act of 1965, as amended, serves the interests of all candidates for municipal court offices, and promotes the right of all voters to elect candidates of their choice.

4. In view of he foregoing, Resolution No. 94-523 of the

Board of Supervisors of Monterey County, adopted December 20, 1994, must be amended to provide for a special run-off election, if such run-off election is necessary, and, except as amended herein, Resolution No. 94-523 continues in full force and effect.

Now, therefore, be it resolved that:

1. The Board of Supervisors of Monterey County, California hereby adopts an emergency, interim Municipal Court Division Plan (the "Plan") for a special election in 1995, consistent with the Second Stipulation presented to the United States District Court for the Northern District of California in the Lopez case by Plaintiffs and the County on January 13, 1994, as follows:

1.1. There will be one Municipal Court District. This District will be county-wide. All municipal court judges, regardless of residency or division area, will serve the entire county and can be assigned to any judicial assignment or any court location. Assignments will be made without regard to residency or division area. For the purpose of this Plan, the term "district" is and shall be the "district" referred to in Section 5 of Article VI of the Constitution of the State of California and Chapters 6 and 8 of Title 8 of the Government Code of the State of California.

1.2. The Plan shall consist of four divisions. A division will be a specific geographic area in which only the persons residing may vote. These judicial divisions shall be used solely for the purpose of electing municipal court judges. These divisions shall not be used for any other purpose, including, but not limited to, the assignment of cases or court locations. Three of the divisions will be one judge divisions. The fourth division shall consist of seven judges. For the purpose of election of judges, the term "division" as used in this Plan is and shall be the "district" referred to in subdivision

(b) of Article VI of the Constitution of the State of California.

1.2.1. A summary table of the Plan setting forth the total population, voting age population, and estimated population of voting age citizens within each division is attached to this resolution and incorporated herein by reference.

1.2.2. The boundaries of the divisions shall be as set forth in the maps attached to this resolution and incorporated herein by reference. The County Counsel, after consultation with legal counsel for the Lopez Plaintiffs, may make minor adjustments to the boundary lines of any division in the event that such changes may be necessary or appropriate and do not conflict with the requirements of the Voting Rights Act.

1.2.3. Divisions 1, 2, and 3 as shown on the attached maps shall be one judge divisions. Division 4 as shown on the attached maps shall consist of seven judges. For purposes of this Plan, the Board of Supervisors hereby designates the following judges to the divisions specified:

Division 1: Judge Burleigh's seat
Division 2: Judge Fields' seat
Division 3: Judge Simmons' seat
Division 4: Judge Curtis' seat
Judge Hedegard's seat
Judge Kingsley's seat
Judge Scott's seat

1.2.4. Municipal court judges elected at the special primary election on June 6, 1995, or at the

special run-off election on August 1, 1995, if such run-off election is necessary, shall take office upon certification of election results by the Registrar of Voters, or as soon thereafter as practicable, and shall hold office under the Plan until the first Monday in January, 1997 pursuant to federal court order.

1.3. The Plan shall comply with the requirements of the Voting Rights Act.

2. The Board of Supervisors hereby calls a special primary election in the County of Monterey for the election of municipal court judges pursuant to the Plan. The special primary election shall be conducted on June 6, 1995, and the schedule of election activities shall be as set forth in the memorandum of the Registrar of Voters to the County Counsel dated October 4, 1994, a copy of which is attached to this resolution and incorporated herein by reference.

2.1 In the event that no candidate for municipal court judicial office receives a majority of votes cast for that office at the special primary election, a special run-off election shall be conducted on August 1, 1995 between the two candidates receiving the highest number of votes for that office, and the winner shall be that candidate receiving the highest number of votes at the special run-off election.

2.2. The Registrar of Voters is hereby directed and authorized to perform such duties as may be required by law, necessary or useful, or customary and appropriate in the conduct of the special primary election and the special run-off election, if such run-off election is necessary, so long as not inconsistent with the schedule of election activities attached hereto.

2.3. The precincts, polling places for said precincts, and persons appointed and designated to serve as election officers for said special primary election and the special run-off election will be those determined, designated, and appointed pursuant to state law by the Registrar of Voters.

2.4. This special primary election may be consolidated with such other elections as may be held on June 6, 1995, under state law with the County of Monterey.

///
///

PASSED AND ADOPTED on this 10th day of January, 1995, upon motion of Supervisor Karas, seconded by Supervisor Johnsen, by the following vote, to wit:

AYES: Supervisors Salinas, Pennycook, Perkins, Johnsen, Karas.

NOES: None.

ABSENT: None.

I, ERNEST K. MORISHITA, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof at page — of Minute Book 68, on January 10, 1995.

Dated: January 10, 1995

ERNEST K. MORISHITA, Clerk of the Board of Supervisors, County of Monterey, State of California.

By /s/
[Pamela Olivas] Deputy

Seal of the United States Department of Justice

U.S. Department of Justice

Civil Rights Division

Voting Section
P.0. Box 66128
Washington, D.C. 20035-6128

DLP:MAP:SBD:tlb
DJ 166-012-3
95-0023; 95-0507
95-0619; 95-0620

March 6, 1995

Douglas C. Holland, Esq.
Monterey County Counsel
P. O. Box 1587
Salinas, California 93902-1587

Dear Mr. Holland:

This refers to the submissions to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, of the following voting changes for the municipal court of Monterey County, California:

1. the consolidation of the municipal and justice courts that existed on November 1, 1968, into a single municipal court with nine judgeships;

2. the establishment of a tenth municipal court judgeship;

3. the adoption of an interim election plan for a 1995

ATTACHMENT C

special election pursuant to which municipal court judges shall be elected from four election subdistricts (known as divisions) with Divisions 1, 2, and 3 each electing one judge and Division 4 electing seven judges;

4. the districting plan for the divisions (as adopted on December 20, 1994, and modified in the manner reflected in the February 21, 1995, correspondence from the county's demographer, Dr. Jeannne Gobalet);

5. the term of office of persons elected as municipal court judges pursuant to the interim election plan; and

6. the procedures for conducting a June 6, 1995, special primary and an August 1, 1995, special runoff election to elect one judge each in Divisions 1, 2, and 3, and four judges in Division 4 (superseding the procedures for conducting a single, "winner-take-all" election on June 6, 1995).

We received your submission of the municipal court consolidation, the interim election plan, the districting plan (as adopted on December 20, 1994), the term of office, and the procedures for conducting a June 6, 1995, single election on January 3, 1995; your submission of the procedures for conducting a June 6, 1995, special primary and an August 1, 1995, special runoff election on January 11, 1995; your submission of the revisions to the districting plan on February 23, 1995; and your submission of the additional judgeship on March 6, 1995. Supplemental information was received on January 6 and February 26, 1995.

The Attorney General does not interpose any objection to the municipal court consolidation, the interim election plan, the districting plan (as modified), the term of office, the procedures for conducting a June 6 special primary and an August 1 special runoff, and the additional judgeship. However, we note that Section 5 expressly

provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine these changes if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

With regard to the procedures for conducting a single June 6 special election, this change has been superseded and, accordingly, the Attorney General will make no determination with respect to this change.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

By: /s/

Elizabeth Johnson
Acting Chief, Voting Section

cc: Joaquin G. Avila, Esq.

Monterey
County
California
Seal
1850

FAX COVER

PAGE

To: Mr. Mark Posner-DOJ

From: Leroy W. Blankenship

Fax Number: 1-202-307-2569

Company: Monterey County Counsel

Date: Time:
3/6/95 15:02:08

For Information Call:
1-408-755-5045

Subject: Additional Information

Fax Number: 1-408-771-0595

Pursuant to your request and that of Ms. Donovan this afternoon, Monterey County, California hereby requests that you review the addition of the 10th municipal court judge as part of the County's preclearance submission concerning the interim plan for election of municipal court judges, as provided by the US District Court's order of December 20, 1994 in Lopez v. Monterey County, California, USDC N.Cal. No. C-91-20559-RMW (EAI).

As noted by the Court's order at 3:7, "Monterey County had two municipal and seven justice court districts" before 1968. Based on information provided to us on short notice, we believe that these nine districts had eleven judges (as of the coverage date of November 11, 1968) as follows:

Salinas Municipal Court:	2

ATTACHMENT D

Monterey Municipal Court:	2
San Ardo Justice Court:	1
King City Justice Court:	1
Greenfield Justice Court:	1
Soledad Justice Court:	1
Gonzales Justice Court:	1
Castroville-Pajaro Justice Court:	1
Pacific Grove Justice Court:	1

We will attempt to verify this information as quickly as we can and contact you with the results.

Our understanding is that the number of justice court judges was reduced as retirements occurred and as court consolidations progressed; there was, however, no reduction in the number of municipal court judges assigned to the bench(s) in Monterey County. By 1983 when the municipal court consolidation was completed, there were nine municipal court judges. The 10th municipal court judge was added as the result of the State Trial Court Funding Legislation (stats. 1987, ch. 1211 (SB 709)) and Monterey County Board of Supervisors Resolution No. 89-597, a copy of which resolution will be faxed separately. The 10th municipal court judge, Wendy Duffy, was appointed by the Governor and assumed office on November 2, 1989.

Cover pages by Delrina

Before the Board of Supervisors in and for the County of Monterey, State of California

Resolution No. 88-597	)	[Handwritten
Resolution of the Board of	)	note: Mark
Supervisors of the County of	)	Posner
Monterey, Authorizing a Tenth	)	Dept. of
Judge for the Municipal Court	)	Justice
for the Purpose of Calculating	)	1-202-307-
Trial Court Funding Block	)	2569]
Grant Under Government Code	)	
Section 77202.....	)	

WHEREAS, the passage of Senate Bill 612, Chapter 945, Statutes of 1988, repealed and added Chapter 13 to Title 8 of the Government code (Section 77000 et seq.), known as the Brown-Presley Trial Court Funding Act of 1988; and

WHEREAS, the passage of Assembly Bill 1197, Chapter 944, Statutes of 1988, appropriated from the State General Fund the sums necessary to provide quarterly block grants to option counties based upon sums specified pursuant to Government Code Section 77200; and

WHEREAS, the provisions of Senate Bill 709, Chapter 1211, Statutes of 1987, authorize nine Municipal Court Judges for the County of Monterey and at such time as the Board of Supervisors finds there are sufficient funds for an additional judge and adopts a Resolution to that effect, authorize ten judges.

NOW, THEREFORE, BE IT RESOLVED that the Monterey County Board of Supervisors finds there is sufficient funding for one Municipal Court judgeship in addition to the nine judges previously authorized provided the State reimburses the County for each Judgeship based upon a rate of $ 53,000 per Judgeship per quarter, to

be adjusted annually as set forth in Chapter 945 of the statutes of 1988.

BE IT FURTHER RESOLVED, in addition to any other rights in the matter the County might have, that if the rate of reimbursement falls below that set forth above, upon a vacancy on the Municipal Court bench, the Board of Supervisors may, by resolution, determine that sufficient funds are not available for the tenth judge and may withdraw the Board's authorization for the tenth judgeship.

PASSED AND ADOPTED on the 13th day of December, 1988, upon motion of Supervisor Petrovic, seconded by Supervisor Shipnuck,, and carried by the following vote, to-wit:

AYES: Supervisors Del Piero, Shipnuck, Petrovic, and Karas.

NOES: None.

ABSENT: Supervisor Strasser Kauffman.

/

/

I, ERNEST K. MORISHITA, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof at page = of Minute Book 61, on December 13, 1988
Dated: December 13, 1988

ERNEST K. MORISHITA, Clerk
of the Board of Supervisors,
County of Monterey, State of
California.
By ____/s/_____Deputy
[Nancy Lukenbill]

ADMINISTRATIVE OFFICER'S COMMENTS

		BOARD	AGENDA
SUBJECT:	RESOLUTION UPDATING THE OFFICIAL COUNT OF MONTEREY COUNTY MUNICIPAL COURT JUDICIAL POSITIONS AND INDICATING AVAILABILITY OF FUNDING	MEETING DATE 12-13-88	NUMBER S-9

RECOMMENDATION

That the Board approve the attached Resolution and authorize the Chair to sign on behalf of the County of Monterey.

DISCUSSION

Judicial Council of California requests that counties indicate by Resolution the correct count of judicial positions as a result of recently enacted legislation.

Senate Bill 709, Chapter 1211, Statutes of 1987, authorized Monterey County one additional Municipal Court judgeship contingent upon funding being appropriated in the State Budget. That having occurred, and in order to receive block grant funding for 10 rather than 9 judgeships for the period of January through March, 1989, this Resolution is required. This does not signify our intent to participate in the Brown-Presley Trial Court Funding Act of 1988; it merely allows for the block grant to be calculated to include the payment for the tenth judge should the Board and the Presiding Judges agree that participation is in the best interest of the County of Monterey. Only when that judge is on the bench will he/she receive the salary.

/s/
JOSEPH HART
Principal Administrative
Analyst

JH:km55c

REPORT TO THE MONTEREY COUNTY BOARD OF SUPERVISORS

Subject	Authorize Tenth Judge for Municipal Court	Board Meeting Date 12/13/88	Agenda Number S-9

Department Municipal Court

RECOMMENDATION:

It is recommended that the Board of Supervisors adopt a resolution authorizing a tenth Judge for the municipal court.

SUMMARY:

The Judicial Council has recommended an increase in judicial positions for the Municipal Court and legislation supported by the Board has been passed authorizing an additional position provided that the Board find funds are available and the county participates in trial court funding. It is anticipated that trial court block grant funds will become available from the State on January 1, 1989.

DISCUSSION:

The Municipal Court requested a Judicial needs study from the Judicial Council in 1986. The results of that study indicated a need for 12 judicial positions for the Municipal Court in 1987. Judicial Council weighted caseload findings are at an average of 11 judicial positions for the first half of Fiscal year 88-89 and at 12.24 judicial positions for the months of July-October 1988. There are ten judicial positions at this time, nine judges and one commissioner. The Court has worked hard in recent years to improve efficiency of its calendar and is proud of its success. The individual calendar system instituted

by the Court has been used as a model for other Municipal Courts in the State. The additional position is needed to maintain an efficient calendar and provide the proper level of service to the public.

Senate Bill 709 Chapter 1211 of the statutes of 1987 (Trial Court Funding Bill) amends Section 73562 of the government code to add a tenth Judge to the Court upon a finding by the Board of Supervisors that there are sufficient funds and the adoption of a resolution to that effect.

FINANCING:

Senate Bill 612, Chapter 945 of the statutes of 1988 changed the trial court funding to provide for a net block grant of $ 53,000 per quarter per Judicial position to counties that exercise the option to become funded by the State, plus a supplemental grant of a Municipal Court Judge's salary less $ 9,500 annually. For purposes of calculating the block grant a judgeship shall be deemed to be "authorized by statute" beginning with the fiscal year next following a resolution by the Board of Supervisors. It is expected that a bill will be introduced as urgency legislation amending that section to read "beginning with the quarter next following a resolution by the Board of Supervisors. Should the County "opt in" to State funding the block grant will provide funds for a tenth Judicial position. If the position is authorized during the month of December, the additional funding would begin in the first quarter of 1989 regardless of whether the position is filled provided that the section is amended by new legislation.

The cost of additional clerical support needed in Municipal Court for the additional Judge is estimated to be $ 79,000, services and supplies, $ 35,000.

An additional courtroom will be required. The assignment and location of the new Judge has not been determined and will depend upon workload and courtroom availability.

OTHER AGENCY INVOLVEMENT:

The creation of an additional Judicial position will have an impact on other criminal justice agencies, i.e., District Attorney, Public Defender, Sheriff, Probation. The annual costs to those agencies associated with an additional Judge are estimated by those agencies to be:

Sheriff	$ 40,000
D.A.	$ 88,500
Pub. Def.	$ 88,500
Probation	$ 67,300
	$ 284,300

What the costs actually will be depends upon the assignment of the Judge, i.e., if the assignment is strictly civil, the costs to other agencies will be minimized.

/s/
Katharine Tisdale
Municipal Court Administrator

KT/ss

ELECTIONS DIVISION
(916)445-0820

California State Seal

Office of Secretary of State
State

1230 J Street

Sacramento, California 95814

For Hearing and Speech Impaired Only:
(800) 833-8683

March Fong Eu

January 2, 1990

Chief, Voting Section
Civil Rights Division
Department of Justice
Washington, D.C. 20530

[Stamp] Civil Rights Division
Voting Section
90 JAN - 9
AM 11:13

RE: Submission Under Section 5, Voting Rights Act of 1965, As Amended, 42 W.S.C. 1973c.
28 C.F.R. § 51.22

To Whom It May Concern:

Pursuant to Section 5 of the Voting Rights Act of 1965, As Amended, the Secretary of State of California, as chief elections officer, is submitting 25 California state elections statutes relating to voting qualifications and voting procedures. The statutes, copies of

ATTACHMENT E

which are enclosed, are identified by the attached list.

The date of final adoption of the elections statutes appears on the face of each statute, and an explanation of the difference between the submitted change and the existing law is found on the face of each statute in the Legislative Counsel's Digest.

I have attached the Roster California Legislature 1989-90. Those legislators who are authors of bills included here may be contacted directly during the review period if further information is desired for their particular bill regarding the origin, language, and intended effect of the bill.

The non-urgency legislation is effective January 1, 1990, while the urgency legislation has gone into effect to the extent necessary in preparation for the 1990 elections. Unless otherwise indicated on the attached list as urgency with an effective date, the legislation is effective January 1, 1990.

Please let us know of any additional information you may require.

Sincerely,

/s/
CAREN DANIELS-MEADE
Chief, Elections Division

CDM/rsn/pl

Enclosures

cc: (List only)

Joan L. Bullock
Kings County Clerk-Recorder

Government Center
1400 West Lacey Blvd.
Hanford, California 93230

Kenneth L. Randol
Merced County Clerk
2222 "M" Street, Room 14
Merced, California 95340

Brad Clark
Monterey County Registrar of Voters
201 Main Street
P.O. Box 1848
Salinas, California 93902

Frances J. Fairey
Yuba County Clerk and Recorder
Courthouse
215 Fifth Street
Marysville, California 95901

89vralet

SUBMISSION UNDER SECTION 5 OF THE

VOTING RIGHTS ACT OF 1965 AS AMENDED

SUBMITTED BY:

CAREN DANIELS-MEADE
CHIEF, ELECTIONS DIVISIONS
1230 "J" STREET, ROOM 232
SACRAMENTO, CA 95814-2974

JANUARY 2, 1990

1989 CALIFORNIA STATE LEGISLATION RELATING TO THE FEDERAL VOTING RIGHTS ACT

Chapter #	Bill #	Subject	Author	Affected Code	Action	Sections Affected
61	AB 660	District elections	Killea	Elections	Amend	23533
				Water	Amend	35106, 35107, 71505
					Add	35100
					Repeal	71460, 71470, 71471, 71472, 71510, 71511, 71513 & 71514
67	AB 1247	Municipal elections, nomination	Mountjoy	Elections	Amend	22840.5

Chapter #	Bill #	Subject	Author	Affected Code	Action	Sections Affected
		papers and incumbents				
204	AB 571	Recalled officers	Chacon	Elections	Amend	27333 & 27341
233	SB 393	Cities	Russell	Government	Amend	56760, 56829, 56830, 56831, 57002 & 57068
238	AB 1415	Judicial office and incumbents	Mountjoy	Elections	Amend	25301 & 25305
303	SB 1497	Campaign contributions	Doolittle	Government	Amend	85202

Chapter #	Bill #	Subject	Author	Affected Code	Action	Sections Affected
310	SB 58	Ballots and polling places	Marks	Elections	Amend	29480 & 29630
					Add	29506, 29634, 29635 & 29636
					Repeal	14248
323	SB 362	Local Agency Formation Commissions	Bergeson	Government	Amend	57025
					Repeal	56161, 56654, 56655, Article 8 (commencing with § 50190) of Chapter 1 of Division 1 of Title 5

Chapter #	Bill #	Subject	Author	Affected Code	Action	Sections Affected
					Repeal & add	56383
				Health & Safety	Amend	6960.3
347	AB 620	Affidavits, initive and referendum, death of a candidate, vote tabulating devices, precinct supplies, and vote count programs	Chacon	Elections	Amend	703, 4007, 4052, 6490.3, 10326, 17022, 17182 & 27023
403	AB 941	Financial disclosure statements	Lempert	Government	Amend	87200

Chapter #	Bill #	Subject	Author	Affected Code	Action	Sections Affected
414	AB 233	Yuba County Water Agency	Chandler	Uncodified	Amend	Section 7 of Yuba County Water Agency Act (Chapter 788 of the Statutes of 1959)
415	AB 377	Intimidation of the voter	Polanco	Elections	Amend	29632
					Add	29630.5
608	SB 1423	Monterey and Santa Cruz Counties Municipal Courts	Mello	Government	Amend	73560, 73562, 73565, 73566, 73567, 73568, 74691, 74693 & 74693.1

Chapter #	Bill #	Subject	Author	Affected Code	Action	Sections Affected
617	SB 2493	Water districts, initiative measures	Campbell	Elections	Amend	5156.5
					Add	5156.6
623	SB 979	Legislators' salary	Beverly	Government	Amend	8901
638	AB 633	Nomination and registration documents	Mountjoy	Elections	Amend	503, 503.5, 6833, 6838 & 6920
680	SB 16	Voter Information and confidentiality	Lockyer	Elections	Add	615
				Government	Add	6254.4
710	SB 584	Local government and reorganization	Bergeson	Government	Amend	56476, 56486 & 57103

Chapter #	Bill #	Subject	Author	Affected Code	Action	Sections Affected
					Add	57087.7
720	SB 981	Circulators' affidavit and initiative and referendum petitions	Dills	Elections	Amend	44, 3519, 3520, 3706, 4004, 4005, 4008, 6494 & 22841
764	SB 491	Mass mailing, contributions to public agency officers	Marks	Government	Amend	84305 & 84308
789	SB 486	Special Districts	Bergeson	Government	Amend	56375, 61601 & 61601.7

Chapter #	Bill #	Subject	Author	Affected Code	Action	Sections Affected
					Add	61017, 61222 & 61621.8
					Repeal	61601.12, 61601.13, 61601.16, 61601.17, 61601.18 & 61601.20
					Repeal & add	61601.10, Part 2 (commencing with § 61100) of Division 3 of Title 6
				Health & Safety	Amend	4816

Chapter #	Bill #	Subject	Author	Affected Code	Action	Sections Affected
					Add	4730.7
				Public Resources	Add	5506.7, 5538.7 & 5539.7
				Water	Amend	36578
				Uncodified	Amend	Section 96 of Chapter 22 of Statutes of 1960, First Extraordinary Session
983	SB 592	Domicile, affidavit of registration, precinct	Marks	Elections	Amend	216, 305, 1513, 3564.1, 3702, 3754, 3785.1,

Chapter #	Bill #	Subject	Author	Affected Code	Action	Sections Affected
		boundaries, ballot arguments, and initiatives				4055, 5014.1, 5157.6, 5326 & 29202
1148	SB 680	Voter registration	Marks	Elections	Amend	800
					Add	805
1417	SB 710	Justice courts	Stir-ling	Code of Civil Procedure	Amend	167, 170.8, 396b & 399
				Govern-ment	Amend	13967.5, 68080, 68202.5, 71702, 71600, 71661, 71661.1, 71662, 71664.5, 72056.1, 75002,

Chapter #	Bill #	Subject	Author	Affected Code	Action	Sections Affected
						75003, 75004, 75026, 75033.5, 75101 & 75103
					Add	75029.1, 75029.2 & 75076.2
					Repeal	71611, 71612, 71613, 71660, 71664 & 71700
				Penal	Amend	980 & 1164
				Vehicle	Amend	1803 & 1803.5

Chapter #	Bill #	Subject	Author	Affected Code	Action	Sections Affected
1452	SB 1431	Contribution expenditures	Roberti	Elections	Repeal & add	Chapter 5 (commencing with § 12400) of Division 9
				Government	Amend	84211 & 91005
					Add	Article 8 (commencing with § 85800) to Chapter 5 of Title 9

JPT:GS:DOW:rac
DJ 166-012-3
Z8966

March 12, 1990

Ms. Caren Daniels-Meade
Chief, Elections Division
1230 J Street
Sacramento, California 95814

Dear Ms. Daniels-Meade:

This refers to Chapter 608, S.B. No. 1423 (1989), which recognizes the creation of a 10th municipal court judge in Monterey County, California, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on January 9, 1990.

We understand that Monterey County created this judgeship by Resolution. Our records fail to show that this change has been submitted to the United States District Court for the District of Columbia for judicial review or to the Attorney General for administrative review as required by Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973 c. If our information is correct, it is necessary that this change either be brought before the District Court for the District of Columbia or submitted to the Attorney General for a determination that the change does not have the purpose and will not have the effect of discriminating on account of race, color, or membership in a language minority group. Changes in procedure which affect voting are unenforceable unless and until the Section 5 preclearance requirements have been met. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.10).

ATTACHMENT F

Since the change affected by Chapter 608 is related to the creation of this judgeship, it is necessary that these changes be reviewed simultaneously under Section 5. Accordingly, the Attorney General will make no determination with regard to your submission until such time as the creation of this judgeship undergoes Section 5 review. See also 28 C.F.R. 51.22(b).

By separate letter of this date we have informed Monterey County of the need to obtain Section 5 preclearance of the creation of this judgeship.

Sincerely,

James P. Turner
Acting Assistance Attorney General
Civil Rights Division

By: /s/

Barry H. Weinberg
Acting Chief, Voting Section

cc: Ms. Nancy Lukenbill

cc: Public File

JPT:GS:DOW:rac
DJ 166-012-3
Z8751

March 12, 1990

Ms. Nancy Lukenbill
Clerk to the Board
240 Church Street
Salinas, California 93901

Dear Ms. Lukenbill:

It has come to our attention that Monterey County, California, has adopted a resolution creating a 10th municipal judgeship.

Our records fail to show that this change has been submitted to the United States District Court for the District of Columbia for judicial review or to the Attorney General for administrative review as required by Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973 c. If our information is correct, it is necessary that this change either be brought before the District Court for the District of Columbia or submitted to the Attorney General for a determination that the change does not have the purpose and will not have the effect of discriminating on account of race, color, or membership in a language minority group. Changes in procedure which affect voting are unenforceable unless and until the Section 5 preclearance requirements have been met. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.10).

Should you elect to make a submission to the Attorney General for administrative review rather than seek a declaratory judgment from the District Court for the District of Columbia, please

ATTACHMENT G

follow the procedures set forth in Subparts B and C of the guidelines.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Monterey County plans to take with respect to this matter.

If you have any questions, feel free to call David Wiese (202-272-6288) of our staff. Refer to File No. Z8751 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

James P. Turner
Acting Assistance Attorney General
Civil Rights Division

By: /s/

Barry H. Weinberg
Acting Chief, Voting Section

cc: Ms. Caren Daniels-Meade

cc: Public File

42 U.S.C. § 1973 c.

Alteration of voting qualifications and procedures; action by State or political subdivision for declaratory judgment of no denial or abridgement of voting rights; three-judge district court; appeal to Supreme Court

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973 b (a) of this title based upon determinations made under the first sentence of section 1973 b (b) of this title are in effect shall enact or to seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973 b (a) of this title based upon determinations made under the second sentence of section 1973 b (b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973 b (a) of this title based upon determinations made under the third sentence of section 1973 b (b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973 b (f) (2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure

may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

Pub.L. 89-110, Title I, § 5, Aug. 6, 1965, 79 Stat. 439, redesignated and amended Pub.L. 91-285, §§ 2, 5, June 22, 1970, 84 Stat. 314, 315; Pub.L. 94-73, Title II, §§ 204, 206, Title IV, § 405, Aug. 6, 1975, 89 Stat. 402, 404.

28 C.F.R. § 51.54 Discriminatory effect.

(b) *Benchmark*. (1) In determining whether a submitted change is retrogressive the Attorney General will normally compare the submitted change to the voting practice or procedure in effect at the time of the submission. If the existing practice or procedure upon submission was not in effect on the jurisdiction's applicable date for coverage (specified in the Appendix) and is not otherwise legally enforceable under section 5, it cannot serve as a benchmark, and, except as provided in paragraph (b) (4) of this section, the comparison shall be with the last legally enforceable practice or procedure used by the jurisdiction.

Monterey County Municipal Court Districts
Summary Table
Plan 7 B

	1	2	3 Including All	Excluding Prison
Total Pop.	**35,691**	**34,547**	**31,630**	**25,634**
Latino	75%	74%	55%	59%
White (NH)	17%	17%	35%	37%
API	5%	7%	1%	2%
Black	2%	2%	8%	1%
IEA (NH)	1%	0%	1%	1%
Other (NH)	0%	0%	1%	0%
Pop. 18+	**22,220**	**21,797**	**22,838**	**16,842**
Latino	69%	69%	49%	54%
White (NH)	22%	21%	37%	42%
API	6%	7%	1%	2%
Black	2%	2%	11%	2%
IEA (NH)	1%	1%	1%	1%

	1	2	3 Including All	Excluding Prison
Pop. 18+ Cont'd				
Other (NH)	0%	0%	1%	0%
Citizens 18+(Est.)	**12,950**	**12,649**	**16,049**	**11,313**
Latino	52%	52%	30%	33%
White (NH)	37%	35%	52%	61%
API	7%	8%	1%	2%
Black	3%	3%	14%	2%
IEA (NH)	1%	1%	1%	1%
Other (NH)	0%	0%	1%	0%

NOTE: Latino percentages exclude Hispanic Blacks and Hispanic APIs. A district's Hispanic percentage may be one percentage point higher than a district's Latino percentage.
NH = Non-Hispanic
IEA = American Indian, Eskimo, or Aleut
API = Asian or Pacific Islander
Columns may not appear to total 100 percent because of rounding.

	4	Total
Total Pop.	**253,792**	**355,600**
Latino	18%	33%
White (NH)	64%	52%
API	9%	8%
Black	8%	6%
IEA (NH)	1%	1%
Other (NH)	0%	0%
Pop. 18+	190,854	257,709
Latino	16%	28%
White (NH)	68%	57%
API	9%	8%
Black	7%	6%
IEA (NH)	1%	1%

	4	Total
Pop. 18+ Cont'd		
Other (NH)	0%	0%
Citizens 18+(Est.)	**170,088**	**211,735**
Latino	11%	17%
White (NH)	74%	68%
API	7%	7%
Black	8%	8%
IEA (NH)	1%	1%
Other (NH)	0%	0%

Largest District	36,256
Smallest District	31,630
Difference	4,626
Ideal District	35,566
Deviation	13.0%

Lapkoff Gobalet Demographic Research, Inc.

Douglas C. Holland (#069014)
County Counsel
County of Monterey
Courthouse
240 Church Street, Room 214
Salinas, California 93902

Telephone: (408) 755-5045

Attorneys for Defendant
MONTEREY COUNTY, CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICKY M. LOPEZ, CRESCENCIO PADILLA, WILLIAM A. MELENDEZ JESSE G. SANCHEZ, and DAVID SERENA, Plaintiffs, vs. MONTEREY COUNTY, CALIFORNIA, Defendant	No. C-91-20559 RMW (EAI) (Voting Rights Action/ Three Judge Court) STIPULATIONS OF PLAINTIFFS AND MONTEREY COUNTY FOR HEARING TO SHOW CAUSE Date: March 31, 1994 Time: 1:30 p.m. Judges: Circuit Judge Mary M. Schroeder District Judges James Ware and Ronald M. Whyte
STATE OF CALIFORNIA, Defendant-Intervenor.	

MICHAEL FIELDS, Defendant-Intervenor.

On February 28, 1994, the three Judge Federal District Court in the case of Lopez et al. v. Monterey County ordered Monterey County to submit a new election plan for electing judges to the Monterey County Municipal Court District to the United States Attorney General or to the United States District Court for the District of Columbia for approval pursuant to Section 5 of the Voting Rights Act. [42 U.S.C. §§ 1973 c] The Court further ordered Monterey County to submit an election plan which fully complied with the Voting Rights Act and all applicable provisions of the California Constitution and State law. The Court also noted that if Monterey County was not able to submit such an election plan for Section 5 approval, then Monterey County would be required to show cause at a hearing scheduled for March 31, 1994, as to why such an election plan cannot be submitted. The factual basis for the inability of Monterey County to submit such an election plan should be "supported by affidavit, stipulation of the parties, or other admissible evidence."

Monterey County contends that an election plan cannot be adopted which fully complies with Section 5 of the Voting Rights Act and all applicable state constitutional and statutory provisions. Pursuant to the Court's Order, Monterey County and the Plaintiffs are submitting the following stipulations of fact. Monterey County will move to admit these stipulations of fact into evidence at the show cause hearing:

1. On March 26, 1968, the Board of Supervisors adopted Ordinance No. 1597. This ordinance amended Ordinance No. 1347, establishing municipal and justice court districts in Monterey County. Ordinance No. 1597 became effective on April 26, 1968. This is the Municipal Court/Justice Court Plan that was in effect on November

1, 1968, the effective date of Monterey County's status as a covered jurisdiction under Section 5 of the Voting Rights Act. This plan is therefore the baseline map for reviewing any plan that the Board of Supervisors may adopt consistent with the past direction of this Court. A copy of this map and a summary table is attached as Exhibit "A" to this stipulation.

2. An election schedule for conducting judicial elections in November, 1994 can be implemented. Attached to this Stipulation as Exhibit "B" is an amended election schedule which will permit the November, 1994 election process to proceed.

3. According to the 1990 Census, the Hispanic Origin population constituted 34% of the total population for Monterey County. Pl. Exh. No. 15, at p. 3, Alonzo Gonzalez, et al. v. Monterey County, Civil Action No. C-91-20736 WAI, admitted into evidence, Transcript Vol. XI, at p. 1605, November 17, 1992.

4. During the time period between 1980 through 1990 for Monterey County, the Hispanic Origin population growth rate was 59.1%, while the White Non-Hispanic population growth rate was 7.3%. Pl. Exh. No. 1, Alonzo Gonzalez, et al. v. Monterey County, Civil Action No. C-91-20736 WAI, admitted into evidence, Transcript Vol. XI, at p. 1603, November 17, 1992.

5. The 1980 and 1990 Censuses reported the following Spanish Origin and Hispanic Origin population concentrations for these selected areas in Monterey County:

Area	1980 Census Spanish Origin	1990 Census Hispanic Origin
Castroville Unincorporated	73.7%	79.4%
Salinas City	38.1%	50.6%
Gonzales City	68.1%	82.1%

Area	1980 Census Spanish Origin	1990 Census Hispanic Origin
Soledad City	82.8%	89.5%
Greenfield City	66.5%	77.2%
King City	48.6%	66.7%

Pl. Exh. No. 14, Alonzo Gonzalez, et al. v. Monterey County, Civil Action No. C-91-20736 WAI, admitted into evidence, Transcript Vol. XI, at p. 1605, November 17, 1992.

6. Based upon the 1990 Census, the Hispanic Origin population is geographically concentrated in East Salinas, the Castroville-Pajaro Valley north county area, and the south county area including the Cities of Gonzales, Soledad, Greenfield, and King City.

7. Based upon the 1990 Census, a ten single member district plan for electing judges to the Monterey County Municipal Court District, can be created with each district containing approximately 35,000 persons. Under such a ten single member district plan, at least two geographically compact districts can be created each consisting of more than a 50% Latino eligible voter population. One of the Latino eligible voter population majority districts would be located in the East Salinas area. The second eligible voter population majority district would be located in the south county area.

a. The creation of such a ten single member district plan divides the municipal boundaries of the City of Salinas. The Latino eligible voter population majority district for the City of Salinas under such a ten single member district plan cannot be created unless the municipal boundaries are divided by the district boundaries.

b. Such a ten single member district plan consisting of two Latino eligible voter majority districts cannot be created unless each of those two districts contain less than 40,000 persons.

8. In a report prepared by Professor O.V. Burton,

elections in Monterey County were analyzed and Professor Burton concluded that there were high levels of racially polarized voting. Report at pp. 12 - 13 (See table 1 for a summary of election analysis). The elections analyzed consisted of four county wide contests in 1986 (State Proposition 63; Justice Cruz Reynoso confirmation election; two municipal court elections), two county wide elections in 1990 (State Superintendent for Public Instruction; County District Attorney election), and one district election for the Hartnell Community College Trustees in 1991.

a. Latino communities in Salinas, Castroville-Pajaro Valley, and south county areas are each politically cohesive.

b. These elections contained evidence of Anglo bloc voting which defeated the electoral choices of the Latino community.

(1) Out of all of the votes in Monterey County cast "No" in the retention election of California State Supreme Court Justice Cruz Reynoso, held on November 4, 1986, 69.1% of the votes were cast by voters in precincts with 90% or more non Spanish surname voters.

(2) Out of all of the votes in Monterey County cast "Yes" in favor of having English as the Official Language, in an election held on November 4, 1986, 69.8% of the votes were cast by voters in precincts with 90% or more non Spanish surname voters.

(3) Out of all of the votes in Monterey County cast in favor of "Dean Flippo," in an election for Monterey County District Attorney held on June 5, 1990, 68.3% of the votes were cast by voters in precincts with 90% or more non Spanish surname voters.

(4) Out of all of the votes in Monterey County cast in favor of non Spanish surname

candidates for the office of California State Superintendent of Schools, in an election held on June 5, 1990, 66.1% of the votes were cast by voters in precincts with 90% or more non Spanish surname voters.

9. There have been instances of discrimination in Monterey County that have touched upon the right of Latinos to register, vote, and participate in the political process.

a. In a 1895, the State of California adopted an English literacy requirement in order to vote. In Monterey County, the English literacy requirement was enforced as late as the 1960's. In order to vote in elections in Monterey County, a registered voter had to be "... [a]ble to read the Constitution in English ..." "Voters' Guide," Salinas Californian, February 28, 1966, at page 22 A. The English literacy requirement served to discriminate against those persons in Monterey County who do not speak or understand English.

b. On March 4, 1977, the United States Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. Section 1973 c, issued a letter of objection against Monterey County. Monterey County failed to demonstrate that its bilingual election procedures did "... not have the effect of denying or abridging the vote on account of membership in a language minority group." Pl. Exh. N. 24, at p. 8, Alonzo Gonzalez, et al v. Monterey County, Civil Action No. C-91-20736 WAI, admitted into evidence, Transcript Vol. XI, at p. 1613, November 17, 1992.

c. On February 26, 1993, the United States Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. Section 1973 c, issued a letter of objection against Monterey County. Monterey County failed to demonstrate that its December 21, 1992, supervisor redistricting plan was not adopted pursuant to a discriminatory purpose and did not have a discriminatory effect. The

Attorney General stated:

> Our examination of the county's demographics reveals a discrete concentration of Hispanic population in and near the City of Salinas that provides the basis for a supervisorial district in which Hispanics comprise at least a plurality of the citizen voting age population. The boundaries of the proposed redistricting plan, however, divide a heavily Hispanic area in the southern portion of the City of Salinas from the remainder of proposed District 1, while a heavily white non-Hispanic area of roughly equivalent population in the northern portion of the city is included in proposed District 1.
>
> The proposed redistricting plan appears deliberately to sacrifice federal redistricting requirements, including a fair recognition of Hispanic voting strength, in order to advance the political interests of the non-minority residents of northern Monterey County.

d. During the time period from 1890 to 1992, not a single Hispanic served on the Monterey County Board of Supervisors, Alonzo Gonzalez, et al. v. Monterey County, 808 F.Supp. 727, 734 (N.D.Cal. 1992).

e. Monterey County is unable to establish that several of Monterey County's judicial district consolidation ordinances, which were the subject of this Court's Order dated March 31, 1993, did not have the effect of denying the right to vote to Hispanics in Monterey County due to the retrogressive effect several of these ordinances had on Hispanic voting strength.

10. In elections to the Monterey County Municipal Court District, Monterey County has used the functional equivalent of a numbered place or post system. Such a numbered place or post system impairs the opportunity for the Latino community to elect the candidates of choice of the Latino community. City of Rome v. United States, 446 U.S. 156, 183 - 185, 100 S.Ct. 1548, 1565 - 1566 (1980).

11. Certain socio-economic factors in the areas of education, language, employment, health, and housing have affected members of the Latino community and may hinder their ability to participate effectively in the political process.

a. The 1980 Census reported that out of the total population of persons in Monterey County who were 25 years of age or over and who completed four years of high school the Spanish Origin population consisted of only 11% of such total population. The comparable figure for the non-Spanish Origin population was 89%. Pl. Exh. No. 2, Alonzo Gonzalez, et al v. Monterey County, Civil Action No. C-91-20736 WAI, admitted into evidence, Transcript Vol. XI, at p. 1603, November 17, 1992.

b. The 1980 Census reported that out of the total population of persons in Monterey County who were 25 years of age or over and who completed four or more years of college, the Spanish Origin population consisted of only 4% of such total population. The comparable figure for the non-Spanish Origin population was 96%. Pl. Exh. No. 2, Alonzo Gonzalez, et al v. Monterey County, Civil Action No. C-91-20736 WAI, admitted into evidence, Transcript Vol. XI, at p. 1603, November 17, 1992.

c. The 1990 Census reported that out of the total

population of persons in Monterey County who were 25 years of age or over and who completed four years of high school, the Spanish Origin population consisted of only 19% of such total population. The comparable figure for the non-Hispanic Origin population was 81%. Pl. Exh. No. 3, Alonzo Gonzalez, et al v. Monterey County, Civil Action No. C-91-20736 WAI, admitted into evidence, Transcript Vol. XI, at p. 1603, November 17, 1992.

d. The 1990 Census reported that out of the total population of persons in Monterey County who were 25 years of age or over and who had a bachelor's degree, the Spanish Origin population consisted of only 5% of such total population. The comparable figure for the non-Hispanic Origin population was 95%. Pl. Exh. No. 3, Alonzo Gonzalez, et al v. Monterey County, Civil Action No. C-91-20736 WAI, admitted into evidence, Transcript Vol. XI, at p. 1603, November 17, 1992.

e. The 1980 Census reported that in all of the following categories, Spanish Origin employed persons 16 years and over in Monterey County constituted the following percentages of all of the employed persons 16 years and over in Monterey County for each category: 7.6% managerial and professional specialty occupation; 12.5% technical sales and administrative support; 17.9% service occupations; 70.4% farming, forestry, and fishing occupations; 18.5% precision production, craft and repair; 32.7% operators, fabricators, and laborers. Pl. Exh. No. 4, Alonzo Gonzalez, et al v. Monterey County, Civil Action No. C-91-20736 WAI, admitted into evidence, Transcript Vol. XI, at p. 1603, November 17, 1992.

f. The 1980 Census reported that 9% of the total civilian force (persons 16 years and over) in Monterey County was unemployed. Spanish Origin persons (persons 16 years and over) which were unemployed comprised 4% of the total civilian force in Monterey County. Pl. Exh. No. 5, Alonzo Gonzalez, et al v. Monterey County, Civil Action No. C-91-

20736 WAI, admitted into evidence, Transcript Vol. XI, at p. 1603, November 17, 1992.

g. The 1990 Census reported that 8% of the total civilian force (persons 16 years and over) in Monterey County was unemployed. Spanish Origin persons (persons 16 years and over) which were unemployed comprised 5% of the total civilian force in Monterey County. Pl. Exh. No. 6, Alonzo Gonzalez, et al v. Monterey County, Civil Action No. C-91-20736 WAI, admitted into evidence, Transcript Vol. XI, at p. 1603, November 17, 1992.

h. The 1980 Census reported that 91% of the total civilian force in Monterey County was employed. Only 21% of the Spanish Origin labor force was employed in Monterey County. Pl. Exh. No. 7, Alonzo Gonzalez, et al v. Monterey County, Civil Action No. C-91-20736 WAI, admitted into evidence, Transcript Vol. XI, at p. 1603, November 17, 1992.

i. The 1990 Census reported that 92% of the total civilian force in Monterey County was employed. Only 27% of the Spanish Origin labor force was employed in Monterey County. Pl. Exh. No. 8, Alonzo Gonzalez, et al v. Monterey County, Civil Action No. C-91-20736 WAI, admitted into evidence, Transcript Vol. XI, at p. 1603, November 17, 1992.

j. The 1990 Census reported 12% of the total population for Monterey County was below the poverty level. The comparable figure for the Hispanic Origin population in Monterey County was 21%. Pl. Exh. No. 10, Alonzo Gonzalez, et al v. Monterey County, Civil Action No. C-91-20736 WAI, admitted into evidence, Transcript Vol. XI, at p. 1603, November 17, 1992.

k. The mean income in 1979 for all families in Monterey County was $ 23,894. The comparable figure for Spanish Origin families was $ 17,213. Pl. Exh. No. 11, Alonzo Gonzalez, et al v. Monterey County, Civil Action No.

C-91-20736 WAI, admitted into evidence, Transcript Vol. XI, at p. 1603, November 17, 1992.

l. The mean income in 1989 for all households in Monterey County was $ 43,185. The comparable figure for Spanish Origin households was $ 32,233. Pl. Exh. No. 12, Alonzo Gonzalez, et al v. Monterey County, Civil Action No. C-91-20736 WAI, admitted into evidence, Transcript Vol. XI, at p. 1603, November 17, 1992.

m. The 1990 Census reported that of all of the persons five years and over, 31,432 or 9.6% were persons who spoke Spanish at home and did not speak English well or not at all. Pl. Exh. No. 13, at p. 5, Alonzo Gonzalez, et al v. Monterey County, Civil Action No. C-91-20736 WAI, admitted into evidence, Transcript Vol. XI, at p. 1604, November 17, 1992.

n. The 1990 Census reported that of all of the persons five years and over in households, 29,636 or 9.8% were persons who Spanish at home and were linguistically isolated. Pl. Exh. No. 13, at p. 5, Alonzo Gonzalez, et al v. Monterey County, Civil Action No. C-91-20736 WAI, admitted into evidence, Transcript Vol. XI, at p. 1604, November 17, 1992.

o. The 1990 Census reported that out of the 57,218 owner occupied housing units in Monterey County, 8,853 or 15.5% were owned by Hispanic Origin householders. Pl. Exh. No. 13, at p. 22, Alonzo Gonzalez, et al v. Monterey County, Civil Action No. C-91-20736 WAI, admitted into evidence, Transcript Vol. XI, at p. 1604, November 17, 1992.

p. The 1990 Census reported that out of the 55,747 renter occupied housing units in Monterey County, 16,327 or 29.3% were rented by Hispanic Origin householders. Pl. Exh. No. 13, at p. 22, Alonzo Gonzalez, et al v. Monterey County, Civil Action No. C-91-20736 WAI, admitted into evidence, Transcript Vol. XI, at p. 1604, November 17, 1992.

q. The 1990 Census reported that the total number of persons per occupied housing units in Monterey County was 2.96. The comparable figure for the Hispanic Origin population in Monterey County was 4.34. Pl. Exh. No. 13, at p. 23, Alonzo Gonzalez, et al v. Monterey County, Civil Action No. C-91-20736 WAI, admitted into evidence, Transcript Vol. XI, at p. 1604, November 17, 1992.

r. The 1990 Census reported that the total number of occupied housing units in Monterey County lacking complete plumbing facilities was 773. Out of this number, 360 or 46.8% were occupied by Hispanic Origin householders. Pl. Exh. No. 13, at p. 29, Alonzo Gonzalez, et al v. Monterey County, Civil Action No. C-91-20736 WAI, admitted into evidence, Transcript Vol. XI, at p. 1604, November 17, 1992.

12. Non a single Hispanic has ever been appointed or elected to the Monterey County Municipal Court District. Two Hispanic candidates sought election to the Monterey County Municipal Court District in 1986. Both Hispanic candidates were unsuccessful.

13. There are several provisions of the California State Constitution and California State Law that are applicable to any attempt by the Board of Supervisors to create an election plan for Municipal Court Judges in Monterey County. The most critical provisions are as follows:

a. Article VI, Section 5 of the State Constitution provides that each county is to be divided into Municipal Court Districts as provided by statute; however a city may not be divided into more than one district and each Municipal Court District must have more than 40,000 residents.

b. Article VI, Section 16 of the State Constitution provides that Municipal Court Judges must be elected in their respective counties or districts at general elections.

c. Government Code Section 71040 provides that the Board of Supervisors is empowered to divide the county

into judicial districts for the purpose of electing judges and may change district boundaries and create other districts. Government Code Section 71040 also provides that no city shall be divided as to lie within more than one district.

d. Government Code Section 73560 and 73562 provides for the establishment and maintenance of a one court district, called the "Monterey County Municipal Court District", which encompasses the entire County of Monterey and consists of ten judges.

e. Government Code Section 71042 authorizes the submission of various proposals from the California Judicial Council with a view toward creating a greater number of full time judicial offices, equalizing the work of the judges, expediting judicial business, and improving the overall administration of justice.

f. Elections Code Section 25300 provides for separate judicial offices for each judicial position to be filled at each election.

14. The Board of Supervisors at an open and public meeting on March 14, 1994, specifically reviewed and considered several proposals for the election of judges in Monterey County and has found that each one of these proposals violate at least one provision of state law. The following is a list of each proposal reviewed by the Board of Supervisors and a citation to the provisions of state law which are violated by each respective plan:

a. Map 1 is a two district plan that generally follows the boundaries of Supervisorial District No. 3 and includes all of the City of Salinas within proposed District No. 2. This proposal violates Government Code Sections 73560 and 73562. Although this map would create a Municipal Court District with a total Latino population of approximately 55%, the Latino population only consists of approximately 32% of the total voting age citizens. A copy of Map 1 is attached to this stipulation as Exhibit "C".

b. Map 2 is also a two district plan similar to Map

1 except that this plan essentially establishes the southern boundary of proposed District No. 2 at just south of Greenfield rather than the southern county line. This proposal would also violate Government Code Section 73560 and 73562. This map only slightly improves Latino voting strength and total population percentages from that contained in Map. 1. A copy of Map 2 is attached to this stipulation as Exhibit "D".

c. Map 3 is also a two district plan that generally follows the boundaries of the Third Supervisorial District. This map however divides the City of Salinas. The split of the City of Salinas has the effect of greatly improving overall Latino voting strength as well as total Latino population in proposed District No. 2. Latinos would comprise approximately 70% of the entire population of this district and constitute a slight plurality of 46% of the voting age citizens. This proposal violates Article VI, Section 5 of the State Constitution, as well as Government Code Section 73560 and 73562. A copy of Map 3 is attached to this stipulation as Exhibit "E".

d. Map 4 is substantially similar to Map 2; however, this proposal also splits the City of Salinas and concentrates Latino population within the proposed District No. 2. This proposal would create a district with a total Latino population of just over 73% and the percentage of Latino voting age citizens would be almost 50%. This proposal violates Article VI, Section 5 of the State Constitution, as well as Government Code Sections 73560 and 73562. A copy of Map 4 is attached to this stipulation as Exhibit "F".

e. Map 5 is a two district proposal that is designed solely to maximize Latino voting strength and does not follow any other recognized boundaries. Under this proposal the total Latino population would be 81% and the Latino voting age citizens would comprise 61%. This

proposal would also violate Article VI, Section 5 of the State Constitution as well as Government Code Sections 71040 and 73560. A copy of Map 5 is attached to this stipulation as Exhibit "G".

f. Map 6 is a three district plan that essentially creates a separate Municipal Court District for the City of Salinas, a separate district for the Salinas Valley and North County, and a separate district for the Monterey Peninsula and the Big Sur Coast. Although Latinos would comprise almost 50% of the total population in the Salinas district and nearly 55% in the Salinas Valley-North County District, the percentage of Latino voting age citizens would be less than one-third in each of these districts. This proposal would violate Government Code Sections 73560 and 73562. A copy of Map 6 is attached to this stipulation as Exhibit "H".

g. Map 7A is a proposal substantially consistent with the proposed Second Stipulation and Order presented to the Court by the plaintiffs and the County. This plan would retain a single district for Monterey County and divide the County into four "divisions," "election areas," or "sub-districts". One judge each would be elected from proposed Division Nos. 1, 2, and 3; seven judges would be elected from Division No. 4. These subareas would only be used for election purposes and candidates would not need to be residents of the division or election area in which he or she is elected. This plan would violate Article VI, Section 16, of the California Constitution. A copy of Map 7A is attached to this stipulation as Exhibit "I".

h. Map 7B is a slight modification of Map 7A. This particular map provides for greater deviation by removing Carmel Valley and portions of the Big Sur Coast from the proposed Division No. 3 and places this territory in proposed Division No. 4. This plan also violates Article VI, Section 16, of the California Constitution. A copy of Map 7B is attached to this stipulation as Exhibit "J".

i. Map 8, is a ten district plan that divides the entire county into ten separate Municipal Court Districts. Each of the districts are less than 35,000 and the plan also calls for dividing the City of Salinas between Municipal Court Districts. Under this plan Latinos would constitute a substantial portion of the total population of three of the districts and would have a slight plurality of the voting age citizens in these three districts. This plan violates Article VI, Section 5 of the State Constitution as well as Government Code Section 71040, 73560, and 73562. A copy of Map 8 is attached to this stipulation as Exhibit "K".

j. Map 9 would divide the County into one district but provide for ten "resident areas" as described in Map 8. Under this plan each judicial post would be allocated to one of the ten resident areas and only persons residing within each resident area could be elected to the post assigned to such area. Elections would be held at large within the entire county and within the boundaries of the one Municipal Court District. There is no authority under California Law to allow the establishment of resident areas for judicial elections and the proposal would violate Elections Code Section 25300. The districts in Exhibit "K" would be the "resident areas" of this map.

k. Map 10 consists of one district for all of Monterey County and it also would not divide the County into any other subareas. Pursuant to this plan, elections would be conducted utilizing a limited or cumulative voting method. There is no authority under State Law for implementation of a limited or cumulative voting method for any elections in the State and would violate California Elections Code Section 25300.

15. The Board of Supervisors is unable to devise or prepare any plan for the election of municipal court judges in Monterey County that does not conflict with at least one state law and still comply with the Voting Rights Act.

DATED: 3/15, 1994, Respectfully submitted,

/s/
DOUGLAS C. HOLLAND,
County Counsel

Attorneys for Defendant
MONTEREY COUNTY,
CALIFORNIA

DATED: 3/15, 1994, JOAQUIN G. AVILA
BARBARA Y. PHILLIPS

By /s/
JOAQUIN G. AVILA

Attorney for Plaintiffs

Pages 1 - 56

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE RONALD M. WHYTE, JUDGE
THE HONORABLE MARY SCHROEDER, JUDGE
THE HONORABLE JAMES WARE, JUDGE

VICKY M. LOPEZ, CRESENCIO PADILLA, WILLIAM A. MELENDEZ, JESSE G. SANCHEZ, AND DAVID SERENA, Plaintiffs, vs. MONTEREY COUNTY, CALIFORNIA, Defendant.	)	Case No. C-91-20559

Thursday, September 28, 1995
San Jose, California

Reporter's Transcript of Proceedings

APPEARANCES

For the Plaintiffs — Joaquin G. Avila, Attorney at Law
Parktown Office Building
1774 Clear Lake Avenue
Milpitas, California 95035

Reported by — Lee-Anne Shortridge
Certified Shorthand Reporter #9595

Appearances Continued on Next Page
Computerized Transcription by StenoCat

For the Defendant Monterey County	Douglas C. Holland, County Counsel County of Monterey Courthouse P.O. Box 1587 Salinas, California 93902
For the Intervenor State of California	Manuel M. Medeiros and Daniel G. Stone, Deputy Attorneys General 1300 I Street, Suite 1101 Sacramento, California 94244
For the Intervenor Judge Stephen A. Sillman	Nielsen, Merksamer, Parrinello, Mueller & Naylor Marguerite Mary Leoni, Attorney at Law 591 Redwood Highway, Suite 4000 Mill Valley, California 94941

3

Thursday, September 28, 1995

THE CLERK: Calling case C-91-20559, Vicky Lopez versus Monterey County, on for status conference.

MR. AVILA: Joaquin Avila for the Plaintiffs ....

/

/

/

29

JUDGE WHYTE: Assuming we accepted your - - well, maybe not. Why would it necessarily be retrogressive?

MR. AVILA: In Miller versus Johnson there was a definition of retrogression which stated that if there was any reduction in minority voting strength, and when you have the plan, the temporary plan that was enacted and implemented, you have two Latino majority eligible voter districts which, along with the appointment of the governor, or by the governor, resulted in the election of two Latinos, well, the election of one Latino judge and one ran unopposed, if you compare that to an at-large district, that 50 percent is reduced to 34 percent population, and about 17 or 18 percent eligible voters.

That, under any standard, any retrogression standard that's been implemented by the Supreme Court and any other District Court, would constitute a step backwards for that reason.